

Hargrave, Julie

From: Jakobsen, Judith
Sent: Friday, December 02, 2022 9:31 AM
To: Hargrave, Julie
Subject: FW: Lewis Road development

Here is the first of 2 emails received related to Lewis Rd.

Sincerely,
Judy Jakobsen

Executive Director
Central Pine Barrens Joint Planning & Policy Commission
624 Old Riverhead Road
Westhampton Beach, NY 11978
631-563-0306

CONFIDENTIALITY NOTICE: This electronic mail transmission is intended only for the use of the individual or entity to which it is addressed and may contain confidential information. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please notify the sender immediately by e-mail and delete the original message.

-----Original Message-----

From: Natalie Allegato <alexjarred@optonline.net>
Sent: Thursday, December 01, 2022 9:16 PM
To: Jakobsen, Judith <Judy.Jakobsen@SCWA.com>
Subject: Lewis Road development

CAUTION: This email originated from outside of SCWA. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am writing to oppose the Lewis Road development in the Pine Barrens, which will impact Long Island water. The Pine Barrens must be preserved.

Thank you.

Natalie Allegato
Sent from my iPhone

Hargrave, Julie

From: Richard Amper <amper@pinebarrens.org>
Sent: Tuesday, September 13, 2022 5:21 PM
To: Jakobsen, Judith; PB Hargrave, Julie; Hargrave, Julie
Cc: Nina Leonhardt; Robert DeLuca
Subject: Lewis Road PRD

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Judy and Julie,

We continue to oppose the irresponsible development proposed by Discovery Land. East Quogue residents who oppose this project are not being heard. The Commission must stop this, regardless of the self-serving politicians. Is the Commission responsible for protecting the environment or is it an agent of the developer?

We would like to prior to the meeting on September 21? When can we do so?

Thanks,
Dick Amper

ATTN: Mrs. Judith Jakobson,
Central Pine Barrens Joint Planning
and Policy Commission.

87 Lewis Rd.
East Quogue, NY 11940

5/12/2022

RECEIVED

DEC 05 2022

Central Pine Barrens Joint
Planning & Policy Commission

Dear Mrs. Jakobson,
I am working in the studio at
87 Lewis Rd. East Quogue, next to the last remain-
ing wildlife corridors in this area.

For over a week now, workers have been installing
row upon row of fence stakes, criss crossing the
wildlife corridor. and emailing.

I have been calling the Town Code people for over a
week now. I have yet to witness any action from the
Town.

Jay Snederman has been voting yes on this
monstrous development from the beginning. Ought
he not to recuse himself from the vote for conflict
of interest?

Discovery Land is a corporation that does not follow
the rules. Please deliver us from this ecological
nightmare: the further ruination of our ecology and
aquifer.

Please deliver mercy to our wildlife and residents.
Thank you,
Susan Bailey.

Mrs Ennid Berger
7 Sandra C t
Glen Cove, NY 11542

RECEIVED

DEC 02 2022

Central Pine Barrens Joint
Planning & Policy Commission

To: Ms Judith Jakobsen, Executive Director
Central Pine Barrens Joint Planning and Policy Commission
624 Old Riverhead Road
Westhampton Beach NY 11978

Re: Proposed Lewis Road Pine Barrens Development

Dear Ms Jakobsen:

I am the owner of 2 Marlin Road, East Quogue and have been in part time residence since my parents purchased the house in 1973. I am painfully aware of the amount of over-development that has happened in the area since that time.

It abundantly clear that water has become our most precious resource. The proposed Lewis Road development in the Pine Barrens must be stopped before our aquifers and water resources are further jeopardized by building and fertilizing those acres.

These developers must be stopped now. Please use your Commission to preserve the beautiful Pine Barrens for our children in perpetuity.

Thank you,

A handwritten signature in black ink that reads "Ennid Berger". The signature is written in a cursive, flowing style.

Ennid Berger
Attorney at Law

RECEIVED

DEC 02 2022

November 30, 2022

Central Pine Barrens Joint
Planning & Policy Commission

Dear Ms. Jakobsen,

I write with deep concern for the future of Southampton Town's drinking and surface water resources and for the preservation of our fragile and unique pine barrens habitat. As such, I am deeply opposed to the proposed Lewis Road (PRD) subdivision, golf course and luxury golf resort that developers want to build in the Spinney Hills of East Quogue.

I object to the Planning Board's recent decision to deem the Lewis Road applications complete. The resolution that allowed this application to proceed should never have moved forward, pending the completion of a full SEQRA coordination and environmental impact statement review.

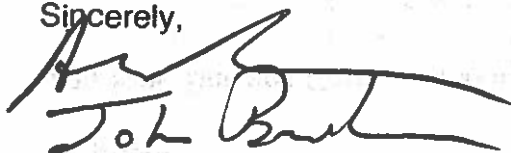
I am aware that the Lewis Road PRD developers submitted a prior golf resort application for this property (known as The Hills Planned Development District - PDD) to the Town Board, which was rejected.

Thus, I find it incredible that the developer continues to assert that this application's prior failed project review (under a completely different set of approval criteria before a completely different land use board) should suffice as a justification for the Lewis Road proposal.

The Pine Barrens Commission must understand that the present project does not reflect the same development density, design configuration, community benefits, or environmental mitigation measures embodied in the prior application.

In fact, the Lewis Road PRD and resort site plan are now fundamentally different proposals with their own new applications which must, therefore, be subjected to the environmental and planning criteria and procedures required for any major new development proposal. Please support the sound planning and conservation interests of my community and yours and **DO NOT APPROVE** this application. The Pine Barrens must be preserved and left pristine for the good of all and for future generations.

Sincerely,



Anna and John Brinsmade
9 Bay Avenue
East Quogue

November 30th, 2022

579 Pleasure Drive
Flanders, NY 11901

RECEIVED

DEC 02 2022

Central Pine Barrens Joint
Planning & Policy Commission

Central Pine Barrens Joint Planning Policy Commission
624 Old Riverhead Road
Westhampton Beach, NY 11978

Attn: Ms. Judith Jakobsen, Executive Director

Dear Ms. Jakobsen,

I recently learned of the meeting scheduled on December 7th at 10 a.m. at Brookhaven Town Hall, I to discuss the proposed development of Lewis Road, East Quogue.

I oppose this planned development proposal located in the Pine Barrens.

This is the source of my family's drinking water and I am very concerned about our water source being negatively affected. I am also very concerned about water quality for future generations! We must preserve our natural resources! Our community's health is at risk if this development is not stopped in the Pine Barrens.

I will try to attend the meeting at Brookhaven Town Hall, but if I cannot attend, I want to at least make my voice heard on behalf of my family and community.

Thank you!

Sincerely,

Ms. Colleen Carini, LMSW

Ms. Colleen Carini, LMSW

Hargrave, Julie

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Sent: Tuesday, September 13, 2022 5:21 PM
To: Jakobsen, Judith; PB Hargrave, Julie; Hargrave, Julie
Cc: Nina Leonhardt; Robert DeLuca
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Attorney at Law

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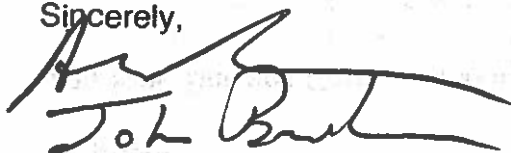
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Ms. Colleen Carini, LMSW

Ms. Colleen Carini, LMSW

Hargrave, Julie

From: Bob DeLuca <bdeluca@eastendenvironment.org>
Sent: Friday, October 14, 2022 10:52 AM
To: Hargrave, Julie; PB Hargrave, Julie
Cc: PB Administrator
Subject: Lewis Road PRD
Attachments: LewisRd_GFEE_9_22.pdf; LewisRD_GFEE_1of3.pdf; LewisRD_GFEE_2of3.pdf; LewisRD_GFEE_3of3.pdf

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Dear Julie,

It is my understanding that the commission is presently reviewing the latest submission by Discovery Land related to the proposed Lewis Road PRD. We have recently testified on this matter before the Southampton Town Planning Board and provided written comments, which I believe are relevant to your review and deliberations.

Attached please find our latest submission to the Southampton Town Planning Board, for consideration as part of the commission's ongoing review.

Should you have any questions or require additional information, please don't hesitate to contact me.

Thank you for your time and for the commission's consideration of our comments.

Best, Bob DeLuca

Robert S. DeLuca
President | Group for the East End
Office: 631-765-6450 x 213 | Cell: 631-495-0601
Email: bdeluca@eastendenvironment.org | Web: www.GroupfortheEastEnd.org

"Protecting the nature of the place you love"

Hargrave, Julie

From: PB Administrator
Sent: Thursday, December 01, 2022 11:17 AM
To: Hargrave, Julie
Subject: FW: Message to Administrator from website

fYI

Sincerely,
Judy Jakobsen

Executive Director
Central Pine Barrens Joint Planning & Policy Commission
624 Old Riverhead Road
Westhampton Beach, NY 11978
631-563-0306

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-----Original Message-----

From: ROBERT DYLEWSKI <polish46prince@aol.com>
Sent: Wednesday, November 30, 2022 6:58 PM
To: PB Administrator <administrator@pb.state.ny.us>
Subject: Message to Administrator from website

CAUTION: This email originated from outside of SCWA. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good evening...I have been fortunate to live in East Quogue for the past 70 years...it is a great place with many positive elements...the proposed development in the Pine Barrens is totally unacceptable and must not be permitted....I trust that you will do the right thing to protect our fragile environment...thank you....Robert Dylewski

Sent from my iPhone

Hargrave, Julie

From: Liz Jackson <lizfromli@hotmail.com>
Sent: Tuesday, November 15, 2022 3:33 PM
To: Hargrave, Julie
Cc: mshea@southamptontownny.gov; jscherer@southamptontownny.gov; pboudreau@southamptontownny.gov; bdeluca@eastendenvironment.org
Subject: LEWIS ROAD PRD: Clearing/Groundwater Concerns
Attachments: LewisPRDClearingISSUE.pdf; LewisPRDClearingERRORS.pdf; lewisPRDClearingcalcERRORS.pdf; LewisCPBCoreOpenSpaceIssue.pdf

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Dear Julie,

Thank you so much for all the work you have been continuing to do, reviewing the Lewis Road PRD project and keeping the responsibility of adequate, accurate and complete information submission on the applicants. Keeping this short, I want to make sure you have this additional information before tomorrow's discussion.

CLEARING CALCULATIONS, OMISSIONS AND DISTURBANCE CONCERNS

1. Total area of property has changed each time new application is submitted. Details are being omitted. Numbers are left in old charts and then referenced differently on newer layouts. Why are these values changing? Property being bought and sold? They never formally explain, and numbers magically always "work out exactly."
2. LANDS to be dedicated to the Town as OPEN SPACE: some already belonged to the Town, other land is already taken and cleared by LIPA, other land is already in use and deeded or covenanted thru Easement as MAIN ACCESS ROADS for existing development. All these areas of DISTURBANCE are still included in calculations of open space.
3. Proposed SCWA site also shows proposed 50 ft wide access Easement, this area is also being calculated as open space.
4. Roads Abandoned throughout Parlato and Timperman parcels are at points not even adjacent to land owned by DLV. And other roads, included in the nearly 16 acres of abandonment to be used to offset development, are calculated or shown twice. Once as part of Timperman Purchase and again as previously included parcels U and V? Where is this recorded? See pdf files attached.
5. Open Space calculations are sometimes clumped into categories like EXISTING VEGETATION OUTSIDE DEVELOPMENT AREA vs INSIDE. (Recently shown with either black or green border and green slanted lines) but lands inside golf course are shown as outside development? sometimes? When I add up the numbers from their charts, the area they are presenting as Lots in O.S. do NOT include all the lands previously disturbed and reference on front chart. Number just float.
6. The only reference to the proposed Conservation Easements which will be required along SOME residential parcels, comes in cryptic reference to % lot cleared under front chart of parcels. Rather than referencing the 10.01ft wide Conservation Easement, they just include in this table that this property might only be allowed 95% clearing. This may be another way they have been tweaking numbers as needed. Then those areas are later mentioned on second chart where open space was being calculated. But again, very poorly referenced and questionable as to how all this was being used in final calculations.

7. Construction Plans now shows a 6ft Security Fence to be placed almost entirely within lands presently designated as open space. Preventing any wildlife to continue moving through the areas, in addition to physically DISTURBING the vegetation all along the transect that will be this fence. Fence would run along backyards of each property along Spinney and would also impact natural woodlands owned by EQ Cemetery Association. Fence basically CANCELS out any argument the applicant had previously regarding the use of fragmented open space to qualify rather than providing more land preserved in larger parcels. Fence runs along Town Preservation lands as well.

8. The original plan referenced access via a Paper Road which was already vetted by Planning Board and established as part of subdivision. The new alternative they came forth with, is a private Easement agreed upon by landowners without authorization of Planning Board. They may have requested it be placed elsewhere on that lot, if proper review took place. NOW the developers are forcing this one option, NOT including the land as part of the project as they don't own it. They are NOT including the disturbance as part of their clearing calculations. They are now being told that Town would require additional vegetation be cleared and Lewis Road be extended into the EQ Farms Parcel, in order for the developers to utilize this as an entrance.

9. (Clearing aside) lands within Easement are also being used to transport sewage and water and will be responsible for controlling drainage and flooding along Lewis Road. How is this allowed, code requires items be contained on subject lot.

10. Current Clearing Request requests that developer be allowed to clear 15 ft wide areas alongside the extent of open space throughout the entire development. They claim this is required to install erosion control barriers. The act of clearing/bulldozing along the boundary lines would guarantee that this project will not be able to maintain these areas undisturbed. They will no longer have any opportunity to TWEAK the numbers when an issue comes up. What penalty is there for disturbing the open space parcels? Required cost to revert? That will in no way deter them.

11. Clearing along the clearing limits will also open up all those lands to additional disturbance from invasive weeds and pests that arrive on site with contractors and materials.

12. In the Groundwater Management plan submitted, they themselves state that as part of the plan, Groundwater monitoring wells will need to be in place and collecting data for at least 3 months prior to the start of any land clearing. Meanwhile the individuals hired to do the land clearing are already planning to start Dec 1. * this is not our fault, they are responsible for their own submissions and timeliness in responding etc. We have been asking to see construction plans for years, and last week was first time I saw one.

13. WHY are irrigation ponds now permitted to be 20+ feet deep, regularly standing water? This was our concern prior to pine barrens approval and applicant assured you and us that the proposed depth at that time was all that would be required.

14. Please LOOK CLOSELY at the lands along golf course in vicinity of Out Parcels in area designated as being underground start of Weesuck Creek. There are a number of deep Drainage Reserve Areas which have been placed along this most vulnerable area, recharge areas where elevation will be reduced to 14ft or less? How is this not a direct means of Groundwater Contamination?

15. Also Groundwater Management Documents reference 5yr terms, yet project will not be completed in 5yrs time.

Please, remain strong and continue to request that the applicant provide you with functional information. Don't let them come in and start saying it's all in the plan without actually seeing it in the plan, and verifying the numbers add up.

Sincerely,

Elizabeth Jackson
516-639-2838

Parcels within Old File Map Area ARE currently in use.

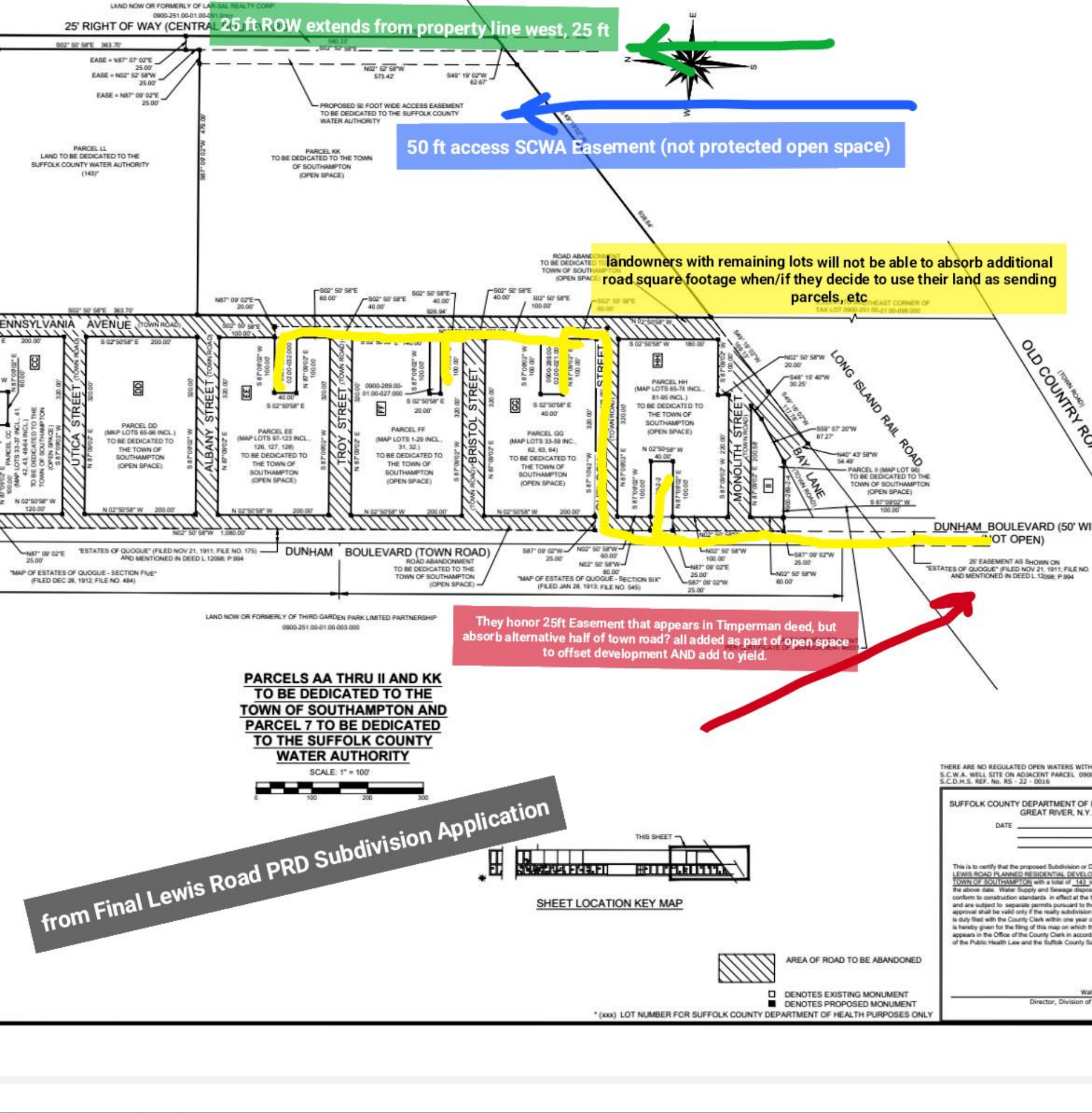
DLV granted 14ft ROW across OPEN SPACE

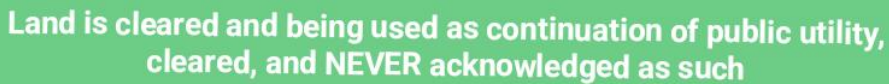
Land was sold while applications for subdivision were active. Now cleared antenna commercial property

Timperman parcel

These are not trivial amounts of land, scale if project makes them appear less significant, but totals to around 16 ACRES of land, never taxed, never privately purchased, previously Owned And Protected by TOS already.

how are they allowed to take roads which aren't even adjacent to parcels they own?





THERE ARE NO REGULATED OPEN WATERS WITHIN
S.C.W.A. WELL SITE ON ADJACENT PARCEL 0900-2
S.C.D.H.S. REF. No. R5 - 22 - 0016

SUFFOLK COUNTY DEPARTMENT OF HEALTH
GREAT RIVER, N.Y.

DATE _____

This is to certify that the proposed Subdivision or Development of LEWIS ROAD PLANNED RESIDENTIAL DEVELOPMENT TOWN OF SOUTHAMPTON with a total of 143 lots conform to the above date. Water Supply and Sewage disposal Plans conform to construction standards in effect at the time and are subject to separate permits pursuant to the approval shall be valid only if the realty subdivision / development is duly filed with the County Clerk within one year of the date of this map. This map is hereby given for the filing of this map on which this map appears in the Office of the County Clerk in accordance with the Public Health Law and the Suffolk County Sanitary Code.

Walter
Director, Division of En

☐ DENOTES EXISTING MONUMENT
☒ DENOTES PROPOSED MONUMENT

* (xxxx) LOT NUMBER FOR SUFFOLK COUNTY DEPARTMENT OF HEALTH PURPOSES ONLY

PARCELS 3, 4, 5, AND 6
TO BE DEDICATED TO THE
TOWN OF SOUTHAMPTON

SCALE: 1" = 200'



Timperman Property extends beyond the land they previously claimed ownership of as per Parlato.

NORTHERLY LINE OF BALTIMORE STREET AS SHOWN
ON "MAP OF QUOGUE ESTATES - SECTION FOUR"
(FILED OCT 09, 1912; FILE 321)

SOUTHERLY LINE OF LAND DESCRIBED
IN DEED L.12098; P.994 AS MONUMENTED

(TOWN ROAD)

BALTIMORE STREET

0900 - 251.00 -
01.00 - 026.000
(MAP LOTS 1-8
INCL.) TO BE
DEDICATED TO
THE TOWN OF
SOUTHAMPTON
(OPEN SPACE)

0900 - 251.00 -
01.00 - 027.000
(MAP LOTS 9-16
INCL.) TO BE
DEDICATED TO
THE TOWN OF
SOUTHAMPTON
(OPEN SPACE)

0900 - 251.00 -
01.00 - 029.000
(MAP LOTS 25-32
INCL.) TO BE
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THE TOWN OF
SOUTHAMPTON
(OPEN SPACE)

0900 - 251.00 -
01.00 - 028.000
(MAP LOTS 17-24
INCL.) TO BE
DEDICATED TO
THE TOWN OF
SOUTHAMPTON
(OPEN SPACE)

(TOWN ROAD)

WASHINGTON STREET

N 02°50'58" W

Lots later omitted from parlato parcels list (Parcel U and V)

yet road abandonment acreage still included?

Hargrave, Julie

From: bk@kearnsgroupintl.com
Sent: Wednesday, November 16, 2022 11:30 AM
To: Hargrave, Julie
Subject: Hills - east Quogue

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Hi Julie,

I live in East Quogue and am opposed to the hills project.

The latest iteration of the project shows a fence, approx. 1/2 mile long and six feet high along the edge of the homes of the residents on Spinney Rd.

I am opposed to this as it will impede the ability of wildlife to access critical areas they use to feed. It will cut them off from the pine barrens.

I ask you make this and the other objections forwarded to you from east Quogue residents at the PBC meeting today.

Thank you.

Bill Kearns
117 Spinney Rd.
631 682- 1164

Sent from my iPhone

Hargrave, Julie

From: Jakobsen, Judith
Sent: Friday, December 02, 2022 9:32 AM
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FYI

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Sent: Thursday, December 01, 2022 8:33 PM
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Subject: Lewis Road Development

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Dear Ms. Jakobsen:

It has been brought to my attention that there will be a special meeting of the Pine Barrens Commission on Wednesday, December 7th, regarding the Lewis Road Development.

Unfortunately, I am unable to attend this meeting, but I would like to express my strong opposition to any type of destruction of the Pine Barrens land.

The Pine Barrens happens to be located on one of several precious aquifers on Long Island, which protects our drinking water. The Long Island Pine Barrens overlies the source of the greatest quantity of the purest drinking water on Long Island. This led the federal Environmental Protection Agency to designate our aquifer system as the nation's first Sole Source Aquifer,

The "Pine Barrens is Long Island's premier ecosystem and one of the Northeast's greatest natural treasures. It is home to literally **thousands of plant and animal species**, many of them endangered or threatened." <https://www.pinebarrens.org/history-of-the-pine-barrens/>

This goes against the preservation of this particular area and we should not make any exceptions for this property to be developed.

Please support the preservation of the Pine Barrens.

Thank you in advance for your time.

Sincerely,
debbie

Hargrave, Julie

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Email: bdeluca@eastendenvironment.org | Web: www.GroupfortheEastEnd.org

"Protecting the nature of the place you love"



Group FOR THE
East End

50th Anniversary

Robert S. DeLuca
PRESIDENT

BOARD OF DIRECTORS

Katherine Leahy Birch
CHAIR

William Ryall
VICE CHAIR

Susan Abdalla

Lou Bevilacqua

W. Marco Birch

Kristen Briner

Andrew Goldstein

Stuart Goode

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September 29, 2022

Jacqui Lofaro, Chairperson
Southampton Town Planning Board
Southampton Town Hall
116 Hampton Road
Southampton New York, 11968

**RE: Lewis Road PRD & Lewis Road Site Plan - Public Hearing Comments
East Quogue, SCTM#'s 0900-250-3-1**

Note: The Planning Board Meeting Date of 10/24/2019, was erroneously referenced as 10/25/2019 in the original hard copy submission of these comments presented to the board on 09/22/2019. This revised letter provides the correct date of the meeting video members are encouraged to review.

Dear Chairperson Lofaro,

On behalf of Group for the East End, I offer the following comments on the above-referenced proposals. For the record, the Group is a professionally staffed, community based not-for-profit organization representing the conservation and community planning interests and values of several thousand member households, individuals, and businesses across the East End of Long Island since 1972. We note that a majority of our membership resides in Southampton Town including several individual members who live in close proximity to the property involved in the above-referenced application.

1. Background

Group for the East End has been engaged in a professional environmental and planning assessment of the proposed development of the subject Discovery Land properties in East Quogue since the developer's original application for a Multi-use Planned Development District (MUPDD) zone change in 2015.

Based on the intensity of the proposed development, its significant deviation from underlying zoning, and its related potential for significant environmental impacts, we opposed the MUPDD application as proposed, while also encouraging further consideration of design alternatives for the property. To assist in the further consideration of reasonable site development alternatives the Group retained professional planners and site design experts (Dodson and Flinker) to develop and submit a mixed use resort-style design alternative for the property, which would have reduced potential impacts to both pine barrens habitat, as well as ground and surface waters in the vicinity of the proposed action (**Exhibit A**).

Protecting the nature of the place you love

The applicant was not interested in further consideration of the design alternatives we suggested, and as the Planning Board is aware, the MUPDD proposal was formally rejected by the Southampton Town Board in December of 2017.

The record of this denial provides a detailed rationale submitted by those town board members who rejected the proposal that despite mitigation measures proposed, substantial concerns about the potential long term risks to pine barrens habitat and water quality could not be overcome to the town's satisfaction.

In response to the denial of their proposed zone change application, the developers responded with a lawsuit against Southampton Town claiming damages of \$100 million. The developers also initially sued two Town Board members (who voted against their project) personally. To date, the lawsuit against the town has not been resolved by the courts.

In the nearly five years since this application was denied, and subsequently resubmitted as both a Planned Residential Development (aka Open Space Subdivision) and resort site plan, to the Planning Board, we have continued to engage in the public review process and make every effort to assure that the current application review was lawful, transparent, objective, and well-integrated due to the overall size of this proposal and the complex nature of these two parallel, but inextricably linked, applications.

Through the proper application of law and long-standing review procedures, we believe all development proposals have a better chance of addressing substantive community, environmental and long-term community planning concerns.

2. Summary Statement

In the ensuing years since the subject applications were submitted to the Planning Board, the orderly and lawful review process for these proposals has failed from both a procedural and substantive standpoint.

In the absence of a rational and predictable review process, the general public and we suspect, most Planning Board members, still lack a detailed understanding of the proposal that is actually under review and heading rapidly toward final decision.

In brief, the mounting procedural failures that have hobbled this review from its outset, are now rising to the surface in the form of unresolved zoning, design, and environmental mitigation questions that should have, and could have, been resolved through the proper application of the New York State Environmental Quality Review Act (SEQRA), which has legally mandated comprehensive development review for more than 40 years.

If the Planning Board fails to step back and carefully review the layers of problems that still exist with this application, it will inevitably find itself exactly where the record reflects it was when it approved the preliminary PRD subdivision plan in 2019 - without sufficient information to make a fully informed decision, while under pressure to decide the matter, based on action deadlines imposed by the Southampton Town Code (Town Code).

We urge the Planning Board to review the video of the Planning Board work sessions (morning and afternoon) of October 24, 2019, to assess the validity of our position (links provided below).

[Southampton Town Planning Board Morning Work Session, 10/24/2019](#)

[Southampton Town Planning Board Afternoon Work Session, 10/24/2019](#)

Given the size, intensity, permanence, and precedential nature of this dual use project, we strongly advise that the planning board rescind its resolution deeming the subject application complete and re-engage the environmental review process to resolve a plethora of outstanding and substantive issues impacting the proper and lawful review of this application.

In support of our position, we provide you with the following comments, questions, and recommendations for your consideration.

3. Substantive and Procedural Review Failures

A. SEQRA Review

SEQRA requires strict procedural and substantive compliance (**Exhibit B**). Pursuant to the implementing regulations of SEQRA, a vast majority of discretionary actions that are approved, undertaken, or funded by an agency must be subjected to a SEQRA review.

Larger projects, like the Lewis Road PRD, are often classified as Type 1 Actions (as this project is), which are defined by regulation as actions that are more likely to require the preparation of a Draft Environmental Impact Statement (DEIS), and which must be subjected to a coordinated review with other approving agencies.

The Planning Board should be aware that the threshold for requiring a DEIS is very low, and that such review may be required based on substantive concern for even one single significant environmental impact.

Despite the fact that the subject applications were newly submitted and no longer connected in any way to the failed Town Board MUPDD application, the Planning Board has never coordinated review, declared itself lead agency, or rendered a determination of significance (the decision by a lead agency to require a DEIS), all of which are required by the implementing rules and regulations governing SEQRA (see 6 NYCRR 617.3 - 617.7).

Instead of properly coordinating review, the Planning Board decided to approach its SEQRA review obligations as if the Town Board MUPDD Zone Change application were still active and controlling over the actions of the Planning Board. This is simply not the case, as the MUPDD application failed, and the Town Board no longer has any discretionary authority over the approval of a residential subdivision or commercial site plan.

Simply-stated the planning board cannot be an involved agency for a Type 1 action where there is no designated lead agency, and the Town Board cannot be the lead agency as it has no approval permits to give for the subject actions (see 6 NYCRR 617.2 (t) and (v)).

Pursuant to the implementing regulations governing SEQRA, the Town Board might have considered re-establishing lead agency status due to the necessary change in jurisdictional authority that occurred after the MUPDD was denied (see 6 NYCRR 617.6 (b)(6)(i)(b)), but no such transfer of authority ever took place.

In the absence of any reassignment of lead agency status, all subsequent applications and related SEQRA reviews conducted by the planning board for the subject properties are clearly separate and distinct from the prior MUPDD application and should have been processed as such.

This is particularly relevant to the Lewis Road applications because the policy and design criteria for approval of a recreational MUPDD (which is an incentive zoning provision and not a conservation zoning provision) are significantly and substantively different from and those governing the approval of an "Open Space Subdivision" and cannot be substituted.

As a result of its approach, the Planning Board bypassed its required SEQRA coordination with other agencies, failed to assume lead agency status for the review of two new development applications under its jurisdiction, and failed to render a subsequent determination of significance as required by SEQRA (see 6 NYCRR 617.7).

As we have noted on many occasions, the Southampton Town Board has no discretionary approval authority over the projects now pending before the Planning Board, and the applications are separate, distinct, and newly submitted.

Having failed to coordinate and process the Lewis Road applications pursuant to SEQRA, the Planning Board eventually adopted an "Involved Agency" SEQRA Findings Statement (a document intended to summarize the results of the SEQRA review process and establish acceptable design criteria and environmental mitigation measures necessary to minimize environmental harm resulting from the project), based extensively on the Town Board's November 27, 2017, Findings Statement for the prior unsuccessful MUPDD proposal.

Setting aside the procedural errors that resulted in the Planning Board's adoption of an involved agency's Findings Statement in the absence of a lead agency (based on different project, subject to significantly different approval criteria, that was denied on environmental grounds), the Findings Statement adopted by the Planning Board for the Lewis Road application also failed to reflect or incorporate several critical environmental mitigation measures deemed necessary in the case of the MUPDD, and included in the Findings Statement adopted by the Town Board for the MUPDD proposal.

Importantly, Dr. Chris Gobler, of Stony Brook University's School of Marine Science, was asked by Southampton Town to review the proposed MUPDD project from the standpoint of its potential nitrogen contribution to local ground and surface waters.

As a result of Dr. Gobler's Final Environmental Impact Statement (FEIS) assessment, dated October 2017 (**Exhibit C**), he found that numerous nitrogen mitigation measures would be necessary for the proposed golf resort application to achieve relative parity (or better) with the expected nitrogen contributions that could be anticipated from an "As of Right" site development. These measures are clearly incorporated as necessary mitigation measures in the Town Board's MUPDD Findings Statement for the prior Hills application (**Exhibit D, @ p.8 (ix)**).

Included in this environmental mitigation package was among other measures:

- *preservation of a 33-acre parcel at the headwaters of Weesuck Creek.*
- *the purchase and abandonment of 30 pine barrens credits,*
- *the construction of a sewage treatment plant for the East Quogue Elementary School,*
- *the creation of a \$1 million dollar fund for community septic upgrades,*
- *a fertilizer cap of 2 pounds/1,000 square feet of cleared property, and*
- *the construction of an on-site sewage treatment plant.*

Unfortunately, by the time the application reached the Planning Board, the only remaining nitrogen mitigation measures from this initial package were the on-site wastewater plant and the fertilizer restrictions.

By Dr. Gobler's calculations, all of the proposed nitrogen mitigation measures identified in his report were necessary to mitigate anticipated nitrogen impacts, yet a majority were removed from the project, and still the Planning Board proceeded to approve its environmental Findings Statement for the Lewis Road proposal, without explanation for abandoning a multi-million dollar nitrogen mitigation plan, deemed necessary by outside, academic review.

Given the fact that future nitrogen contamination from the site was one of the highest priorities under consideration by the Town Board, it's remarkable that the issue was not more carefully evaluated by the Planning Board, but it can, and should be, done at this time.

B. SEQRA SEIS: Threshold Review/B. Laing Associates

As the Planning Board considers public comment on the subject applications, we recommend that members carefully consider the results of the SEIS threshold review conducted by B. Laing Associates.

This review has been cited in related project assessment documents as a basis for limiting the further environmental review of the subject proposals, but a closer review of the final report raises several key issues about the report's recommendations and the process required to raise additional environmental concerns about the pending proposals.

First and foremost, the fundamental question put to the consultants was whether or not the Planning Board should require a Supplemental Environmental Impact Statement (SEIS) for the review of the Lewis Road PRD and site plan applications.

What is most troubling about this primary charge to the consultant, is the fact that an involved agency (which the Planning Board has continued to argue that it is), may not require the preparation of a SEIS, so the primary question put before the consultants turned out to be largely irrelevant unless the Planning Board were to declare itself lead agency, which it never did.

More specifically, with regard to the requirement that a SEIS be prepared, is the fact that this responsibility falls (by regulation) to a designated lead agency and is clearly explained as such in the NYS SEQRA Handbook (**Exhibit E**).

For the Planning Board to require the preparation of a SEIS it would first have to declare itself lead agency, which it never did, and as lead agency, follow the review requirements established under SEQRA (which is also never did). That this issue escaped the attention of the town's hired planning consultants and staff is deeply concerning, and further complicates and undermines the public process of identifying and mitigating potential environmental impacts.

In addition to the misguided process advanced by the consultants, their analysis also failed to notice or address the fact that significant environmental mitigation (nitrogen mitigation) proposed in the original MUPDD (discussed above) and incorporated into the related Findings Statement for the original MUPDD was absent from the Lewis Road plans, which they were responsible for reviewing. The consultants failed to evaluate the potential impacts of this reduced mitigation deemed necessary by outside academic review of the original proposal.

Despite its shortcomings, the consultant's report did clearly identify several substantive information gaps and questions related to nitrogen loading and dispersion modeling, transportation impacts, and other design concerns that they believed could be answered outside of the SEQRA process.

We fundamentally disagree with this approach from a procedural standpoint (because there can be significant substantive consequences resulting from failed review procedures), and remind the Planning Board that in this case, the consultant's own theory about resolving outstanding substantive issues outside of the SEQRA process, and ahead of any application approval, failed very publicly at the Planning Board's morning work session of October 24, 2019.

Members will recall that representatives from B. Laing Associates, recognizing that they were under an action deadline, admitted in the Planning Board work session that they did not receive the information that they had hoped for prior to the decision deadline.

As a result of this approach, the Planning Board made its decision in the absence of critical water quality data specifically recommended by the consultants. Why the decision was an approval and not a denial remains a significant question for the Planning Board.

The consultants also conceded that their initial views on whether or not to require a SEIS were shaped by their expectation that they would receive the outstanding information they required ahead of any action deadline.

Again, this was a failed expectation that virtually anyone with experience in the municipal planning process could have easily anticipated and rectified through the SEQRA process.

We urge members to review the particular exchange between the Planning Board, its consultants, and the applicant, regarding this matter, which can be found on the town's video recording of the October 24, 2019, morning work session, between 1hr and 9 min and 1 hr. and 20 min. into the meeting (see the above links to access this video).

Given the current trajectory of the present review, this exchange and outcome should be highly instructive to the Planning Board.

C. Zoning Board Use Authorizations

As the Planning Board is aware, a significant aspect of the subject proposal is the golf course use of the property as authorized by the Southampton Town Zoning Board of Appeals in its decision dated November 15, 2018, **(Exhibit F)** as follows:

"In conclusion, this Board finds that the proposed 18-hole, 91 acre, private golf course, available only to the owner of the subdivision and not the public-at-large, together with the following maintenance and operating buildings and structures that accompany said golf course (as long as they do not exceed the following square footage: (i) a 4,500 square foot one story main floor with basement Maintenance Facility; (ii) a 500 square foot single story/no basement Irrigation Well Barn; and (iv)(sic) two 500 square foot single story/no basement Comfort Stations located on the golf course; are accessory to the 118-home residential subdivision of 591 acres."

To underscore the very limited nature of the review undertaken by The Zoning Board of Appeals, we note that the decision also states that:

"This Board finds that these structures/buildings were identified by the property owner as being necessary and specifically used in connection with the private golf course, and the Board finds that the presence of these structures will not transform the private golf course from an accessory use to a second principal use. This Board has not been asked by the Building Department to opine upon any other buildings or structures proposed on the premises, including but not limited to a clubhouse, or ten-plex." (Emphasis added)

The details of the ZBA decision make it clear that the vast majority of resort, clubhouse, spa, pro shop, dining room, clubhouse condominiums, parking, and all other attendant recreational development were never authorized by the ZBA as part of the accessory use decision related to the private golf course.

As the Planning Board is now aware, the additional resort/recreational development site plan currently pending amounts to approximately 100,000 square feet of new mixed use commercial/condominium development, which is not permitted in the R-200 residential zoning district (as either a primary or accessory use), and not authorized by any decision of the ZBA.

To be clear, separate from the physical aspects of the golf course use approved by the ZBA, the golf club and resort facilities will function as self-sustaining commercial enterprises (selling food, beverage, pro-shop gear, fitness instruction, golf lessons, etc.). These uses are not permitted in a residential zone.

How the Planning Board ever came to incorporate the consideration of such commercial development within the bounds of residential property as an acceptable use remains baffling to us (especially given that the developer understood it needed the MUPDD zone change to get the mixed use development it sought from the outset) as such usage is clearly not permitted in any of the primary or accessory use tables contained in the Town Code **(Exhibit G)**.

This issue must be reconciled with the requirements of the Town Code, prior to any final approval decision.

D. Resort Site Plan: Approval & Expiration

In addition to the wide range of issues associated with the proper overall review and processing of these applications, there is also a large and substantive question regarding the specific status of the current site plan application as it relates to the prior preliminary subdivision approval.

Specifically, in its Lewis Road Conditional Preliminary Plat Approval (dated 10/24/2019 - Resolution PBRES-2019-335) the Planning Board first resolved to approve a Preliminary Subdivision Application (based on plans submissions dated 11/1/2018, 12/7/2018, and 12/12/2018) **(Exhibit H)**.

In the same resolution, the Planning Board also granted some level of approval for a site plan application, which included an overarching narrative approval for all of the project's recreational development, including a recreational complex, fitness center, clubhouse, private 18-hole golf course and a variety of other accessory structures related directly to the resort usage sought by the applicant.

To our knowledge, the Town Code does not provide for a preliminary site plan review, so the nature of the approval, and the authority by which it was granted, remains a significant question that the Planning Board needs to resolve.

As the Planning Board is undoubtedly aware, in addition to the unresolved issue of permitting a major commercial development plan within the confines of a residential subdivision (a decision that lies far outside the golf course approval granted by the ZBA), the full review of all resort structures, usage, site facility integration, operations, traffic generation and circulation patterns, energy consumption and service connections, fire protection measures, waste generation and handling areas, grading and drainage plans, etc. of this substantial use has never been undertaken by the Planning Board, or integrated into a larger and more comprehensive environmental review of the overall proposal, as a reasonable SEQRA review would require.

A review of the DEIS for the prior MUPDD (upon which the Planning Board based its PRD Findings Statement) application, also provides limited information about these facilities other than their

general location on the property, various architectural renderings, gross square footage estimates, and general water usage assumptions for the overall action.

As with the prior aspects of review discussed above, these issues are best managed through the SEQRA process to avoid a piecemeal review of complex proposals.

Assuming that the Planning Board resolution of 10/24/2019, which approved the applicant's above-referenced site plan, was a valid approval, it is important for the Planning Board to recognize that pursuant to Southampton Town Code Chapter 330-184 (H):

"An approved site development plan shall be valid for a period of two years from the date of approval. All work proposed on the plan shall be complete within two years from the date of approval unless a longer period was approved, or the applicant obtains an extension from the Planning Board."

As such, the above-referenced site plan approval for the subject action would have expired in 2021 and would have to come back before the board for any renewed consideration.

We strongly recommend that the Planning Board take the opportunity of this site plan expiration and the applicant's latest site plan submission, to fully conduct the comprehensive review of this proposal on its merits and assure full compliance with the Southampton Town Code (including the fundamental issue of commercial use in a residential subdivision) and all related SEQRA review procedures.

E. Complete Application Decision

Whether or not the newer Planning Board members are aware of it, the decision to deem an application complete and go to public hearing is one of the most significant decisions in the town's subdivision and site plan approval process.

Most importantly, the close of the public hearing sets in motion an action deadline that can restrict the Planning Board's access to, and evaluation of, critical data that is necessary to a responsible project review, and ultimately pressure the Planning Board to act, without necessary information it needs to make a rational decision.

This concern is hardly hypothetical, and it has played out directly against the Planning Board's interests on this specific proposal. As members will recall (and as outlined earlier in this letter), under the pressure of an action deadline, several Planning Board members and their reviewing consultants found themselves pressured to act, when it was very clear that additional information had been requested and was never produced by the applicant.

Again, a review of the relevant Planning Board work sessions of 10/24/19 (available via video link above), clearly demonstrates both the confusion and frustration experienced by the Planning Board and its consultants over the lack of very important information related to among other things, the proper modeling of potential groundwater impacts. Given the size, intensity,

controversy, and permanence of this proposal, we would hope the Board would not create these same circumstances during the course of its current review.

Of particular importance to the Planning Board's handling of the present applications is the clear direction from the Town Code regarding the requirements for a complete application. Specifically, Town Code Chapter 184 (F) states that:

"No application shall be deemed complete until either a negative declaration has been made for the application pursuant to the State Environmental Quality Review Act (SEQRA), as implemented by Chapter 157 of the Town Code, or, if a positive declaration is made, until a draft environmental impact statement has been accepted by the Planning Board as satisfactory with respect to scope, content and adequacy. Reasonable time shall be provided for compliance with SEQRA, including the preparation of a final environmental impact statement."

Given the clear direction provided in the Town Code, it is remarkable that the Planning Board would agree to deem an application complete in the absence of specified compliance with SEQRA, most notably with respect to the resort site plan aspect of this proposal, but also in light of the Planning Board's long standing experience and obligations with respect to the administration of project review.

We strongly recommend that the Planning Board seek an explanation from both staff and legal counsel as to how this occurred.

4. Conclusions and Recommendations

The subject proposals constitute the largest single applicant development proposal brought before the town in decades.

The overall action is also a very complex and challenging project to review by any measure and is located in an area widely recognized by New York State, Suffolk County and Southampton as having extraordinary environmental value and sensitivity. For these reasons, the project has generated a great level of public interest and concern for a wide variety of reasons, since its original submission as a proposed zone change application.

For several years, at every public opportunity, we have urged the Planning Board to follow the clear requirements of SEQRA with respect to its review of this proposal.

Unfortunately, to this day, the Planning Board has not conducted a SEQRA coordination, nor established a lead agency, nor rendered a determination of significance.

Instead, it has largely framed its environmental review on elements of a prior project, subject to different approval criteria, which was denied by the Town Board, and over which, the Town Board no longer has any discretionary approval authority to serve as lead agency.

The record of this application's review also clearly demonstrates that mitigation measures deemed necessary by outside reviewers are no longer part of the proposal, and substantive issues raised by the Planning Board's own consultants have never been addressed.

Moreover, the project as it exists today (in both its PRD subdivision and related site plan application form), is different in design, density, configuration, and pollution concentration than the portions of the project previously approved by the Planning Board, yet no further comprehensive evaluation appears to be forthcoming.

The record also demonstrates that the proposed golf course approval by the ZBA, was limited in scope and never authorized any of what now appears to be at least 100,000 square feet of undeniably commercial resort facilities that will undoubtedly provide commercial meals, programs, retail sales, events, and a wide variety of other services consistent with a resort business.

This level of development is a far cry from a single tennis court or community swimming pool that might be customarily associated with PRD development.

To this point, the ZBA was explicit in its decision to point out that it was not opining about any aspect of this proposal other than the golf course - so how did all of this come to find its way into the application, and where are such uses authorized anywhere in the residential use tables governing permitted uses in a residential zone?

This extraordinary use decision is a central question that still needs an answer and must be part of the Planning Board's focus as it continues with its review of this proposal.

Finally, the most immediate concern facing the review of this proposal is the provision of sufficient time to respond to public comment, complete a legitimate SEQRA review as required by the specific rules governing the approval of site plans in Southampton Town, and explain how it is that this commercial resort proposal (beyond the golf course) has made it this far down the road on a parcel that is zoned for low density residential use due to its environmental sensitivity and watershed protection values.

Given that the Planning Board deemed the current applications complete without the benefit of a current SEQRA review, and in direct conflict with the statutory obligations Chapter 184 (F) of the Town Code, the resolution deeming these applications complete should be rescinded until such time as the Planning Board can resolve all of the open issues and follow the law that was designed to create a transparent, substantive, and integrated development review process.

If the Planning Board fails to act on the issue raised in these comments, it is entirely likely that it will once again find itself backed up against an arbitrary action deadline, without the information it needs to make its most well-informed decision, and the public will bear the consequences of the board's failed review. Moreover, these environmental and community consequences will be both permanent and precedential with respect to future applications that will come before the Planning Board. The Planning Board must do better.

Thank you for your time and attention to our concerns.

Sincerely,



Robert S. DeLuca
President

Exhibits A-H Attached

Credentials of the Author:

Bob DeLuca is President and CEO of Group for the East End. He holds a Bachelor of Science degree in Environmental Science from Fordham University, and a Master of Science degree in Environmental Science from the NYS College of Environmental Science and Forestry. Bob has worked as a professional scientist, and a land use practitioner working in the areas of environmental assessment, land development and SEQRA implementation across Suffolk County since 1985.

Bob has also served as an Associate Professor of Environmental Studies at Long Island University where he taught land use planning, conservation advocacy and state and local environmental policy, administrative law and SEQRA courses for nearly 20 years.

Exhibit A

**Group for the East End
Reduced Impact Alternative**

for

**The Hills at East Quogue
MUPDD Application**

December 2016

Reduced Impact Alternative
for
The Hills at East Quogue Planned Development District

December 2016



Protecting the nature of the place you love

GroupfortheEastEnd.org



Conceptual Reduced Impact Alternative for The Hills at Southampton PDD
Southampton, NY

GROUP
Hill EHL EAST LTD

Prepared by:
DIXON ELLNER
Landscape Architecture and Planning

Legend:
Public Open Space



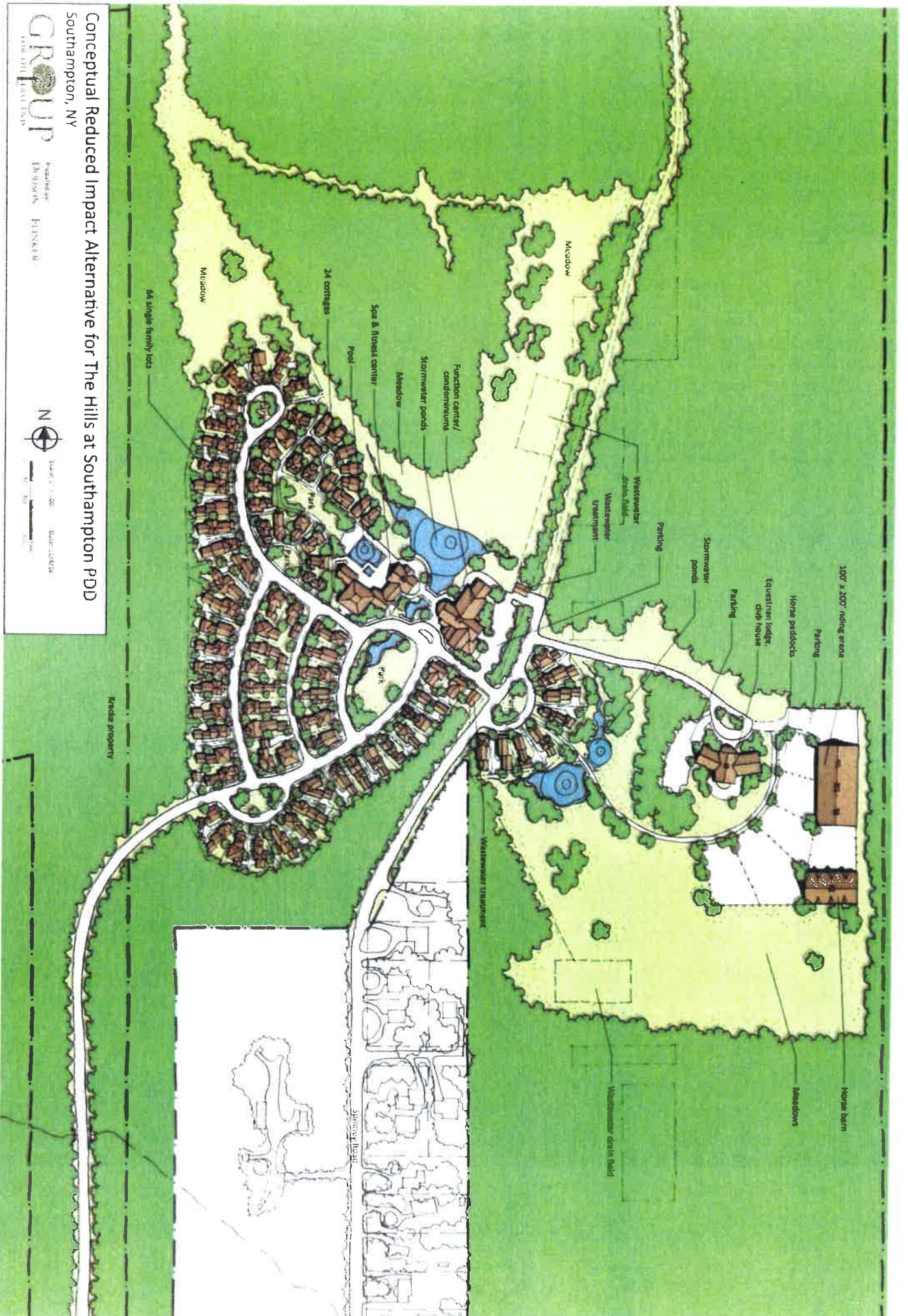
Conceptual Reduced Impact Alternative for The Hills at Southampton PDD
 Southampton, NY

GROUP
 ARCHITECTURAL FIRM

DESIGNED BY
 HENNING



Scale: 1" = 100' DATE: 12/20/2011



Comparison of Impacts: Discover Land Company PDD vs. Conceptual Reduced Impact Alternative

Impacts	Discovery PDD		Reduced Impact Alternative		Comparison: Reduced Impact Alternative vs. Discovery PDD
	Acres	% of Site	Acres	% of Site	
Site Development Total Area	166.86	28.23	23.53	4	86% less developed area
Cleared Areas	166.86	28.23	45	7.61	74% less clearing
Fertilized Turf	88.53	15%	0	0	100% less fertilized turf
Preserved Contiguous Open Space	276	48%	546	92	100% more preserved contiguous open space
Preserved Open Space incl. fragmented areas	424	72%	546	92	29% more open space incl. fragmented areas
Water Usage-	53,810,179	Units gallons per year	11,961,650	Units gallons per year	78% less water usage
Sewage Flow - bldgs. only	41,814	gallons per day	31,770	gallons per day	25% less sewage flow from buildings
Design flow including turf	65,214	gallons per day	31,770	gallons per day	51% less overall wastewater flow
Nitrogen loading					
Turf	655.1	pounds/year	0	pounds/year	100% less nitrogen loading from turf
Sewage from buildings	Variable	by computation model			72 % to 88% less nitrogen loading buildings
Residences total number	118	residences	88	residences	25% fewer residences
Total size of residences	435,800	square ft.	532,800	square ft.	22% greater combined sf of residences
Traffic wkdy PM/Sat peak	103/125	trips per hour	23/31.5	trips per hour	78% to 75% less peak hour traffic



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 LANDSCAPE ARCHITECTS



Rattle Box Farm, Lincoln, MA



Kentlands, Gaithersburg, MD



Warwick Grove, Warwick, NY



Waterville Valley Resort, Waterville Valley, NH



Concord Riverwalk, Concord, MA



East Beach, Norfolk, VA



Jackson Meadow, Marine St Croix, MN



Jackson Meadow, Marine St Croix, MN



Jackson Meadow, Marine St Croix, MN

Conceptual Reduced Impact Alternative for The Hills at Southampton PDD: Comparables

GROUP
FOR THE LAND

Prepared by
DODSON
FLINKER
Real Estate Services and Planning

DATE: 11/11/14

Exhibit B

New York Law Review: *Real Estate Trends*

***"Strict Compliance With SEQRA
A Mandate Court's Enforce"***

by

Anthony S. Guardino Esq.

September 26, 2018

New York Law Journal

Real Estate Trends

WWW.NYLJ.COM

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WEDNESDAY, SEPTEMBER 26, 2018

ZONING AND LAND USE PLANNING

Strict Compliance With SEQRA: A Mandate Courts Enforce

By
**Anthony S.
Guardino**



Several years after the State Environmental Quality Review Act (SEQRA) was enacted in 1975, Rye's town board granted a permit to a property owner to construct an office building on close to 18 acres of town land. The board acted despite the fact that the town had not prepared an environmental impact statement (EIS) as described in SEQRA. On several occasions when considering the property owner's application, however, the town had carefully examined environmental factors such as traffic volume, parking capacity, drainage, soil, vegetation, noise, and aesthetics.

A number of community members challenged the town board's decision, seeking to have the construction permit set aside. They argued that the town had failed to adhere to the mandates of SEQRA.

The trial court dismissed their petition, concluding that "sub-

stantial, not strict compliance with SEQRA" was required and observing that the town had "closely examined the environmental impact factors" even without an EIS.

The Appellate Division, Second Department, reversed in *Matter of Rye Town/King Civic Association v. Town of Rye*, 82 A.D.2d 474 (2d Dept. 1981), where the court ruled that the town had not discharged its duties under SEQRA because it failed "to adhere to the literal requirements" of the statute, notwithstanding that it carried out extensive environmental review procedures in harmony with the spirit of the law.

According to the Second Department, substantial compliance with the "spirit" of SEQRA did not constitute adherence to its policies "to the fullest extent possible," as provided by SEQRA itself in Environmental Conservation Law (ECL) 8-0103(6). The law, and the accompanying regulations, the court emphasized, required "literal compliance."

That courts have reached the same conclusion many times since

the Second Department's decision in *Town of Rye* may seem surprising, given that the "literal compliance" standard is clear and well accepted. Yet local governments all too often fail to literally abide by SEQRA's requirements, at the risk of having their decisions overturned.

This column explains the essential features of SEQRA, reviews a recent case that illustrates the risks of failing to strictly comply with SEQRA's requirements, and concludes by reiterating the importance of literal compliance with this law.

SEQRA's Rules

As many courts have observed, SEQRA represents an attempt by the New York State Legislature to strike a balance between social and economic goals and concerns about the environment. See, e.g., *Matter of Jackson v. New York State Urban Development Corp.*, 67 N.Y.2d 400 (1986). SEQRA's primary purpose is to inject environmental considerations directly into governmental planning and decision making at the

earliest possible time, so that social, economic, and environmental factors are considered together when reaching decisions on proposed activities that may have a significant effect on the environment. *See, e.g., Matter of Neville v. Koch*, 79 N.Y.2d 416 (1992).

To promote the Legislature's goals and to assist agency officials in their assessment of environmental factors, SEQRA requires that an EIS be prepared for such government-sponsored or government-approved projects or actions. ECL 8-0109(2). Described by the New

The lesson is clear: local governments that fail to strictly comply with SEQRA risk having their decisions overturned, even if they considered environmental and other issues and reached the result that they would have reached if they had complied with SEQRA.

York Court of Appeals as the "heart of SEQRA," *Matter of Jackson, supra*, the EIS is a detailed statement setting forth, among other things, a description of the proposed action and its environmental setting; the environmental impacts of the proposed action, including both long-term and short-term effects; any adverse environmental impacts that cannot be avoided if the action is implemented; alternatives to the proposed action; and mitigation measures proposed to minimize the environmental impact.

SEQRA groups the "actions" subject to review into three distinct

categories: "Type I," "Type II," and "Unlisted." Type I actions are those projects directly undertaken, funded, or approved by a government agency that are considered likely to require the preparation of an EIS. Type II actions are activities that the New York State Department of Environmental Conservation (DEC) has determined will not have a significant impact on the environment or are otherwise precluded from environmental review by the ECL and, therefore, are not subject to SEQRA review. Unlisted actions are all actions not identified as Type I or Type II.

The initial step for a government agency that receives an application for approval or funding, or that proposes to directly undertake an action, is to determine whether the proposed action falls within the scope of SEQRA. The statute and regulations mandate that as early as possible in an agency's formulation of an action it seeks to undertake, or as soon as an agency receives an application for funding or for approval of an action, the agency must determine whether the proposed action qualifies as a Type I, a Type II, or an unlisted action for purposes of SEQRA review.

If a proposed project is classified as a Type II action, the agency has no further responsibilities under SEQRA. If not, the agency must make a preliminary classification of the action as either Type I or Unlisted, and begin the process of environmental review by determining, among other things, whether

an environmental assessment form (EAF) or a draft EIS should be prepared and, if more than one agency is involved, which agency should act as the lead agency.

The lead agency then must determine the environmental significance of the proposed action by comparing the information contained in the EAF or draft EIS with criteria established by the DEC as indicators of significant adverse impacts on the environment. The lead agency may determine either that the proposed action will not have any adverse environmental impacts or that the identified adverse environmental impacts will not be significant, or that the action "may include the potential for at least one significant adverse environmental impact."

A written determination by the lead agency that a proposed action will not have a significant adverse impact on the environment, known as a "negative declaration," ends the SEQRA process. Conversely, if the lead agency determines that the proposed action may have a significant environmental impact, it must issue a "positive declaration" and direct the preparation of an EIS.

A local government's failure to literally comply with SEQRA can happen at any stage of this process, as illustrated by *Pickerell v. Town of Huntington*, 45 Misc.3d 1208(A) (Sup.Ct. Suffolk Co. 2014).

'Pickerell'

The case arose after 7-Eleven, Inc., sought a special use permit and an area variance for a proposed demo-

lition and construction project on commercial property in the Long Island town of Huntington. Before the Huntington zoning board of appeals (ZBA) conducted a public hearing on 7-Eleven's proposal, the company submitted various maps, photographs, site plans, and reports to the ZBA, including a traffic impact study, an engineering report, a planning study, and an

A local government's failure to literally comply with SEQRA can happen at any stage of this process, as illustrated by *'Pickerell v. Town of Huntington.'*

appraisal report on impact on real property values of the convenience store it proposed.

At the opening of the hearing, the chair entered into evidence a "Convenience Store Study" prepared by the town's Department of Planning and Environment.

The ZBA held 7-Eleven's application open for comment, and it retained an engineering firm to review the proposed project. In addition to a report prepared by that firm, the ZBA received numerous supplemental reports, expert affidavits, and other documents from 7-Eleven.

The ZBA classified the project as a Type I action and voted in favor of issuing a negative declaration. After it granted 7-Eleven's application, community members and a local civic association challenged the decision in court. The petitioners maintained that the

ZBA had failed to literally comply with SEQRA's requirements in determining that the proposed project, a Type I action, would not have any significant adverse effects on the environment and by failing to require the preparation of an EIS.

The court agreed with the petitioners, holding that the ZBA failed to meet procedural and substantive obligations under SEQRA when ruling on 7-Eleven's application. In particular, the court ruled that the ZBA violated SEQRA by failing to promptly make its own preliminary classification of the proposed project as a Type I, Type II, or Unlisted action, and by failing to verify the accuracy of the information 7-Eleven provided in Part I of the EAF. The court added that the ZBA also failed to have 7-Eleven, the project sponsor, complete Part I of a full EAF, which is required for Type I actions.

Although the negative declaration stated that the ZBA had conducted a coordinated SEQRA review of the proposed project, the court found "no evidence in the record" that any of the involved or interested agencies were notified that the proposed project had been classified as a Type I action. The court also ruled that the ZBA's decision to classify the project as a Type I action and issue a negative declaration was made "without a deliberative consideration of the various environmental issues."

The court concluded that the ZBA failed to meet the obligations SEQRA imposed on a lead agency, and it annulled the ZBA's decision

granting 7-Eleven the special use permit and area variance it sought.

Conclusion

Other courts also have recently rejected local government land use decisions upon finding that the municipality failed to literally or strictly comply with SEQRA. *See, e.g., Matter of Dawley v. Whitetail 414, LLC*, 130 A.D.3d 1570 (4th Dept. 2015) ("SEQRA's procedural mechanisms mandate strict compliance"); *Matter of Healy v. Town of Hempstead Board of Appeals*, No. 3214/2017 (Sup.Ct. Nassau Co. Aug. 28, 2018) (board's decision was "fatally flawed" as it failed to "strictly follow" SEQRA requirements).

The lesson is clear: local governments that fail to strictly comply with SEQRA risk having their decisions overturned, even if they considered environmental and other issues and reached the result that they would have reached if they had complied with SEQRA. Since the failure to comply with SEQRA can doom a municipality's zoning and land use decisions, both the project sponsor and the reviewing agency should meticulously comply with their respective obligations under SEQRA.

Exhibit C

Updated Analysis of Nitrogen Loading Rates From The Hills PDD

**Based on
The Final Environmental Impact Statement**

Christopher J. Gobler, PhD

**Stony Brook University
School of Marine and Atmospheric Sciences
October, 2017**

**UPDATED ANALYSIS OF NITROGEN LOADING RATES FROM THE HILLS
PDD BASED ON THE FINAL ENVIRONMENTAL IMPACT STATEMENT**



CHRISTOPHER J. GOBLER, PHD

OCTOBER, 2017



Stony Brook University
School of Marine and
Atmospheric Sciences

Executive Summary:

The Hills is a Planned Development District (PDD) proposed by Discovery Land Corporation (DLC) to be built in East Quogue. The Hills property is currently comprised of 591 acres of Pine Barrens, open space, and farmland and has been proposed by DLC via the PDD to be made into a seasonal resort with a golf course. The Hills property lies within the watershed of western Shinnecock Bay which has experienced significant losses of seagrass and bivalves in recent years due to increasing nitrogen loads, harmful algal blooms, and low oxygen events. Increases in nitrogen loading to this region is expected to worsen these conditions. For this evaluation, a dynamic nitrogen loading model was constructed using information generated by the NYS Department of Environmental Conservation's Long Island Nitrogen Action Plan (LINAP) as well as standard practices used to determine nitrogen loading rates across Long Island this decade. Using this model, the nitrogen loading rates currently delivered to this property and expected from multiple development scenarios were quantified using information provided by the PDD Final Environmental Impact Statement (FEIS) for The Hills, specific guidance from the Town of Southampton, information from LINAP, and the most up-to-date science available. The series of nitrogen mitigation measures proposed in the FEIS, that did not appear in the DEIS, considered in this report for the Town of Southampton included the preservation (or development) of 33 acres at the headwaters of Weesuck Creek within East Quogue, the purchase of 30 Pine Barrens credits and the associated potential increase housing density, community septic system upgrades, the installation of a sewage treatment plant (STP) to treat wastewater on the PDD property, the installation of a STP for East Quogue Elementary School with both STPs treating wastewater to 10 mg/L, and a conservative estimate of the impacts of fertilization on the site. Calculations demonstrated that the Hills PDD as described within the FEIS yielded a lower nitrogen loading rate compared to a higher and lower impact, as of right development on the property. After accounting for updates within the FEIS, as of right development is estimated to yield 2,500 to 5,100 lbs of nitrogen per year, depending on the level of occupancy, fertilization rates, and the extent of clearing, and the size of lawns on properties. The lower bound of this estimate primarily uses many of the details of the PDD without a golf course as well as the low impact development as proposed by The Group for the East End. The PDD nitrogen load was found to be ~2,000 lbs of nitrogen per year or more than 20% lower than the lowest As of Right scenario. Each scenario provides a greater nitrogen loading rate than the current, undeveloped property (1,200 lbs per year). All of these calculations are, of course, theoretical and the extent to which the actual nitrogen yields on the Hills property match these calculations will be partly a function of the extent to which the characteristics of development matches the details and practices outlined in the PDD. As such, careful monitoring of any potential development, the

watershed, groundwater, surface waters, and surrounding ecosystems will be required to assure optimal environmental outcomes.

Preface:

Christopher J. Gobler is a professor within the School of Marine and Atmospheric Sciences (SoMAS) at Stony Brook University. He received his M.S. and Ph.D. from Stony Brook University in the 1990s. He began his academic career at Long Island University (LIU) in 1999. In 2005, he joined Stony Brook University as the Director of Academic Programs for SoMAS on the Stony Brook – Southampton campus. In 2014, he was appointed as the Associate Dean of Research at SoMAS and in 2015, he was named co-Director of the New York State Center for Clean Water Technology. In 2016, he was given the Environmental Champion Award by the US Environmental Protection Agency for his research efforts and was named the 40th most influential person on Long Island by the Long Island Press. In 2017, he was awarded the Endowed Chair in Coastal Ecology and Conservation within SoMAS. The major research focus within his group is investigating how anthropogenic activities such as climate change, eutrophication, and the over-harvesting of fisheries alters the ecological functioning of coastal ecosystems. He has been researching these topics on Long Island for 25 years and has published more than 150 peer-reviewed manuscripts in international journals on these subjects. He has been calculating nitrogen loads to water bodies across Long Island for more than 20 years.

Background on regional groundwater and surface waters:

Current conditions

'The Hills in Southampton' is comprised of nearly 500 acres of undisturbed Pine Barrens in the town of East Quogue. Beyond the intrinsic value of open space and the ecosystem services and benefits of the Long Island Pine Barrens, this property has numerous benefits to water quality in the region. The natural vegetation on this property acts as a natural filter for nitrogen and other contaminants deposited from the atmosphere. This is clear from the levels of nitrogen and general contaminant currently present in the Suffolk County Water Authority's groundwater wells on Malloy Drive which show exceedingly low levels of nitrogen (< 0.5 mg per liter) and undetectable levels of pesticides and other organic compounds¹. In contrast, other groundwater in the region has been contaminated by various land use processes. For example, the upper glacial aquifer in regions away from the Hills such as the SCWA Spinney Road well field is already contaminated with high levels of nitrate and perchlorate to the point Suffolk County Water Authority has stopped using these wells to deliver drinking water.¹ Unfortunately, more than 100 families in East Quogue with private wells rely on upper glacial aquifer for drinking water.¹

The proposed development in The Hills is located 1,500 feet from Weesuck Creek and western Shinnecock Bay and groundwater travels times from land to bay in this region are less than five years² meaning that land use changes on the Hills such as adding homes or a golf course will quickly impact the nearby coastal ecosystems. This being the case, it is important to clearly understand and document the current and recent conditions of these ecosystems. During Hurricane Sandy, the waters of Shinnecock Bay crossed Montauk Highway in East Quogue, flooded the three major communities on the East Quogue peninsula (Shinnecock Shores, Pinesfield, Pine Neck Landing) and approached Main Street³. East Quogue has been fortunate to still have lush stands of salt marsh along the east and west sides of Weesuck Creek. During Sandy, those salt marshes protected East Quogue from a significantly worse flooding scenario than it would have experienced without these marshes⁴.

In 2010, NYSDEC declared Shinnecock Bay an impaired waterbody due to excessive wastewater nitrogen loads⁵; total nitrogen levels in the Bay exceed guidance levels set by USEPA⁶. Impairments brought about by high nitrogen loading to western Shinnecock Bay include: Annual toxic brown tides⁶, dissolved oxygen levels in summer dangerously low for marine life^{6,7}, the near complete loss of seagrass beds⁸, a critical habitat for fisheries⁸, and low densities of hard clams and conditions under which baby shellfish cannot survive⁹. Brown tides in Shinnecock Bay continue to worsen. The brown tide in 2016 was the most intense on record

and excessive nitrogen loading will make such events worse in the future. Brown tides have a cascading effect on the marine ecosystem, killing off remaining seagrass and shellfish, which in turn makes the ecosystem more vulnerable to additional brown tides⁶. Western Shinnecock Bay is one of five places in NYS that experiences paralytic shellfish poisoning (PSP) caused by saxitoxin and was closed by NYSDEC due to this toxin in 2011, 2012, and 2015.¹⁰ In fact, every year the epicenter of PSP during these events has been in Weesuck Creek in East Quogue. And the PSP event in 2015 was three-fold more toxic than any measurement made to date¹⁰ suggesting that conditions are worsening.

Future threats

Any additional nitrogen loading from land in East Quogue will worsen existing conditions in the bay. Enhanced nitrogen loading will push already high nitrate levels in public and private water supply wells for East Quogue closer to the USEPA federal limit for drinking water¹. In conducting a state-wide assessment of coastal flooding, NYSDEC released a report in April 2014 that concluded that salt marsh habitats provide critical flood protection to New York coastal communities and that increases in land-to-sea delivery of nitrogen degrades, erodes, and eventually destroys salt marshes⁴. Given the progression of sea level rise, there could be an intensification of flooding risk in East Quogue coastal communities associated with storms, hurricanes, and/or extreme tides with more nitrogen loading. Furthermore, the numerous impairments in Shinnecock Bay including toxic brown tides, low oxygen levels, the loss of eelgrass, and the loss of shellfish will all worsen in Shinnecock Bay with additional nitrogen loads^{8,13,14}. Increasing nitrogen loading has been shown to increase the intensity and toxicity of PSP on Long Island.¹⁵ More nitrogen loading in East Quogue could intensify PSP in and around Weesuck Creek leading to larger and/or longer shellfish bed closures. This also creates the risk that citizens of Southampton could become seriously sickened or worse from eating contaminated shellfish. Due to diffusive groundwater flow and tidal exchange, the impacts of enhanced nitrogen loads on surface water will be experienced in regions to the east and west including Hampton Bays, Quogue, and Westhampton Beach. Finally, all of these worsened conditions have serious economic repercussions on tourism, fisheries, restaurants, and even home values¹⁶.

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Scope of this analysis

This document has been prepared to solely consider the potential impacts of the Hills PDD on groundwater and surface water in the region. Within this realm, the overwhelming majority of this document considers the loading rates of nitrogen that will be a consequence of differing potential land uses of the property given the sensitivity of surface water and habitats to nitrogen loading rates. The author has created a dynamic nitrogen loading model that uses the loading rate constants and assumptions that have been developed as part of the NYSDEC's Long Island Nitrogen Action Plan (LINAP). This plan has been collaboratively developed by CDM Smith, NYSDEC, Suffolk County, Cornell University, USGS, US EPA, and Stony Brook University and represents a scientific consensus among these teams and contains the most up-to-date and best science available on the subject of nitrogen loading within coastal watersheds. The tables and constants used in calculations appear in Table 1. This document comments on the actual contents of the FEIS only. The author acknowledges there are many other very important aspects of the project beyond nitrogen loading that are not considered here.

Current use of properties

Presently, the 591 acres of land that comprise the Hills PDD include open space, Pine Barrens forest, and farmland. My analyses indicate the nitrogen loading rate is 1,200 lbs per year if the farm fields within the property are actively being fertilized (Gobler, March 2017). If they are not actively being fertilized, the loading drops to ~660 lbs per year (Gobler, March 2017). Local observations have indicated that the singular farm field on the Parlato property is not used every year and thus not always fertilized. Similarly, it is not clear if the Kracke property under consideration is actively managed and fertilized. Further, the area contains shrubs and ornamentals which are typically fertilized at a lower rate than row crops and thus at a lower rate than used in the DEIS. Differences between my calculated nitrogen loads and those of the DEIS also arise from the use of a leaching rates for nitrogen different than those that have been accepted by LINAP and a fertilization rate higher than has been accepted by LINAP.

Changes from the DEIS to the FEIS

The FEIS differed from the DEIS with regard to nitrogen impacts of the PDD in five material ways:

- 1) The FEIS now includes preserving an additional 33 acres of land located at the headwaters of Weesuck Creek. The zoning associated with the parcel is R-40 which would result in an as-of-right yield of 30 homes.
- 2) The purchase and abandonment of 30 Pine Barrens Credits consistent with the objectives of Central Pines Barrens Program, which eliminates potential nitrogen load associated with 30 single family homes that could be otherwise constructed with these credits.
- 3) An On-Site Wastewater Treatment System that would remove nitrogen at a level at or below 10mg/L compared to allowable County standard of 19mg/L.
- 4) The construction of a Sewage Treatment Plant for the local school in addition that would remove nitrogen at a level at or below 10mg/L
- 5) A fertilizer cap of 2 pounds per year per 1000 square feet for the entire property cleared property.
- 6) A \$1M fund to support community-wide septic upgrades. This final approach had been mentioned in the DEIS but was not part of the analysis provided by the author to the Town of Southampton. For completeness, this is now included here.

Changes to nitrogen loading due to additional nitrogen reducing measures in the FEIS

The analysis of the DEIS indicated the nitrogen loading rates of the PDD would be 4,128 lbs per year (Gobler, March 2017). For consideration of the 'As of Right' development, two scenarios were previously considered: One that included nearly all of the default assumptions made by the DLC consultants and a second considering considered a 'reduced impact' alternative, using some information proposed by the PDD as well as many of these assumptions and conditions within the 'reduced impact' alternative proposed by The Group for the East End for the property. The As of Right development using the DLC default assumptions would yield 3,454 lbs of nitrogen per year a level similar to the level determined by the DLC consultants in the DEIS (3,288 lbs). The reduced impact alternative provides a nitrogen loading rate (~1,700 lbs nitrogen per year) that is roughly half of the As of Right conditions but highly similar to the PDD without the golf course.

Preserving 33 acres of land located at the headwaters of Weesuck Creek

Following the guidance of Southampton Town, the zoning associated with the parcel is R-40 and would result in an as-of-right yield of 30 homes. The nitrogen loading model was used to include a development on this parcel with 30 homes and the associated changes in nitrogen loading to that land that would emanate from wastewater, fertilizer use, and land clearing. The model was run using parameters that were consistent with a higher and lower impact development as outlined within the analyses provided for the DEIS. As pristine, undeveloped forest, this land presently yields < 40 pounds of nitrogen per year. It is assumed any

development would include advanced septic systems to treat wastewater to 19 milligrams of nitrogen per liter. If developed with the maximal allowable amount of clearing, above average acreage of lawns, and a mostly year-round residency, such a development would yield 823 pounds of nitrogen per year. If developed more realistically, with a normal amount of clearing (based on Town averages), normal acreage of lawns (based on Town averages), and a realistic mix of seasonal and year-round residency (based on U.S. census data), such a development would yield 384 pounds of nitrogen per year. These totals must be added to the expected 'As of Right' scenarios as they are not part of the Hill PDD plan. This would bring the total nitrogen yield from the maximal As of Right scenario to 4,278 pounds of nitrogen per year and the yield from the more conservative / realistic development scenario to 2,122 pounds of nitrogen per year.

The purchase and abandonment of 30 Pine Barrens Credits

It has been proposed that DLC will purchase 30 Pine Barrens Credits within the Central Pines Barrens Program, which would eliminate potential nitrogen load associated with 30 single family homes that could be otherwise constructed with these credits. This is a challenging scenario to evaluate given the precise location of the additional homes that could be developed is not fully known. In one scenario, these homes were hypothetically sites on the Hills site as an additional 30 units build in a manner similar to the other units as proposed in the DEIS and FEIS. In this case, if developed to with the maximal allowable amount of clearing, above average acreage of lawns, and a mostly year-round residency using scenarios suggested by DLC consultants within the DEIS, the 30 additional units would yield 852 pounds of nitrogen per year. If developed with lesser impact including a lower amount of clearing, smaller acreage of lawns, and a realistic mix of seasonal and year-round residency, such a development would yield 362 pounds of nitrogen per year. These yields are similar to the hypothetical 33 acres scenarios run above, indicating that if these credits were placed elsewhere, the yields would likely be somewhat similar if the lot sizes were similarly small. More homes or larger lot sizes would yield more nitrogen. Regardless, using the scenarios described here would bring the total nitrogen yield from the maximal As of Right scenario to 5,130 pounds of nitrogen per year and the yield from the more conservative / realistic development scenario to 2,484 pounds of nitrogen per year. It is noted that if the PDD is not approved by the Town of Southampton and if the DLC desired to land the PBC on the Hills property (i.e. the scenario used here), this action would need to be approved by the Town Board and would not be an As of Right alternative without such approval.

An On-Site Wastewater Treatment System for Hills PDD

The FEIS states that the Hills development will be outfitted with a Baswood sewage treatment facility that would remove nitrogen at a level at or below 10 milligrams of nitrogen per liter, lower than the allowable County standard of 19 milligrams of nitrogen per liter. It was estimated in the DEIS that the Hills development would produce 562 pounds of wastewater nitrogen per year using technology that treated to 19 milligrams of nitrogen per liter. Treatment to 10 milligrams of nitrogen per liter would remove an additional 330 pounds of nitrogen per year from the development.

The construction of a Sewage Treatment Plant East Quogue Elementary School

East Quogue elementary school is comprised of ~400 students, ages 5 – 12, and ~100 adults including faculty and staff. The school year is 180 days of the year and the building is fully occupied by people for approximately six hours per day. Faculty and staff work longer days and some staff are present all year. There are daily activities in the afternoons and evenings as well as special events such as sports, concerts, cub scouts, community meetings, plays, graduation, etc. It is estimated that the collective activities of the school releases 400 pounds of nitrogen from wastewater per year with standard septic tanks and leaching rings to the aquifer. The construction of a sewage treatment facility that treated wastewater to 10 mg N per liter would reduce the wastewater-based nitrogen output from the school to 65 pounds per year, removing 335 pounds of nitrogen per year. It is noted that sewage treatment plant operation can be expensive and that it is not clear who would be responsible for the operation and maintenance of this system.

A fertilizer cap of 2 pounds per year per 1000 square feet

This change effects the nitrogen load of the PDD in two ways. Firstly, it eliminates the possibility of additional nitrogen fertilizer being added to the proposed golf course beyond 2 pounds per year per 1000 square feet in the event that the proposed fertigation approach does not yield the expected level of nitrogen needed, a possibility acknowledged within the DEIS. This removes 500 lbs of nitrogen per year that had been added in the prior analyses given that the ability of fertigation to deliver a set level of nitrogen seems uncertain. This change also reduces the total amount of fertilizer added to the property by 257 lbs given a higher rate that had been planned for the golf course in the DEIS.

A \$1M fund to support community-wide septic upgrades

Presently, there is great interest in reducing nitrogen loading from wastewater across Suffolk County and the recent renewal and update of the Community Preservation Funds within the Town of Southampton to include funds for upgrading septic systems will provide funds to convert standard septic systems to new, innovative and alternative systems that remove greater

amounts of nitrogen, specifically to levels below 19 milligrams per liter as per the recently approved Article 19 of the Suffolk County health code. The Hills PDD proposed to spend \$1M on upgrading septic systems within the East Quogue watershed. While off-the-shelf septic systems that remove large amounts of nitrogen approved by Suffolk County can cost \$20,000 installed (e.g. South Fork Septic Services, East Hampton, NY) additional costs may include landscaping, marking out utilities, pump out and abandonment of older systems, and electrical updates / installations. Hence, a cost of \$25,000 per septic upgrade was used for the purposes of this analyses, which would result in 40 homes in East Quogue being upgraded as a result of the PDD. Given the known rates of seasonal occupancy for East Quogue as reported by Suffolk County's Department of Planning, 40 East Quogue homes with standard septic systems produce ~562 pounds of nitrogen annually, but would release 178 pounds of nitrogen annually with a system reducing down to 19 milligrams of nitrogen per liter, resulting in 384 pounds of nitrogen removed annually. It is notable that the upgrading of septic systems is presently voluntary and the extent to which associated nitrogen reductions are achieved will be a function of how many homeowners in the East Quogue watershed take advantage of this program. Even if this program along, with any programs developed by Suffolk County and/or the Town of Southampton, cover the full cost of installation, installing such systems require annual maintenance and inspection fees. How this may impact program participation is unknown.

Fertigation:

Fertigation is a novel and innovative approach for groundwater remediation and holds promise to be one of many potential mitigation strategies used on Long Island to reduce the loading of nitrogen from land to sea. This concept employs turf-remediation by allowing vegetation to absorb nitrogen from groundwater. This "pump-and-fertilize" concept proposed is a primary mitigating measure for the PDD. Since this report was completed, the Town's consultant, AKRF, in developing the SEQRA findings statement attributed substantial nitrogen reduction to this methodology. The applicant indicated that some 1,800 pounds of nitrogen per year will be removed from the ground water due to the pumping of 20 million gallons of groundwater for irrigation per year and groundwater testing in the western portion of the subject property revealed nitrogen levels averaging 14 mg N per liter.

The largest uncertainty with regard to the success of the fertigation approach stems from the groundwater nitrogen concentrations which vary strongly both horizontally and vertically in the region where the groundwater is to be pumped, being as high as 28 mg per liter and as low as 1 mg per liter. Suffolk County Water Authority wells on Spinney Road have consistently produced high levels of nitrogen (7 – 14 mg per L) for many years, but there are currently no concrete plans to use this water source for fertigation.

Since my original report was written, fertigation has been implemented on the Indian Island golf course in Riverhead and I have become aware of its use in other locations including a golf course in Massachusetts. While the precise level of nitrogen in groundwater that will be used for fertigation remains an unknown, it seems highly likely that any nitrogen in solution that is applied to a turf will be absorbed at a significant rate. Being conservative and consistent with the on-going NYSDEC-led LINAP study as well as my prior evaluations, a 20% leaching rate of nitrogen by turf could be considered. Regarding actual concentrations of nitrogen in groundwater, 2 mg N per liter is substantially lower than the levels considered by the Hills consultants (14 mg per L) but is within the range of what is present near the proposed well to be used for fertigation. If an application rate of 20 million gallons per year is used by the golf course as proposed, this would result in the removal of 281 pounds of nitrogen per year (Table 1).

Summary:

Collectively, the additional nitrogen mitigation measured included in the FEIS as interpreted by the Town of Southampton would yield nitrogen loads of 2,500 to 5,100 pounds of nitrogen per year for lower and higher As of Right development scenarios whereas the proposed Hills PDD would yield 2,000 pounds of nitrogen per year. This equates to a lower yield than the lower impact As of Right development but is still more than the current yield of the forest and farmland.

The total calculation of nitrogen impacts and mitigation for this project are complicated by the challenge of attempting to quantify several inexact variables under differing regulatory requirements, while simultaneously making judgments about effective implementation, voluntary program participation, long-term enforcement, and site management over time. There are uncertainties in this analysis with regard to where the Pine Barrens Credits to be purchased would 'land'. Further, it is not known how many homeowners will participate in the septic upgrade program within the watershed.

Future considerations:

All of these calculations are, of course, theoretical and the extent to which the actual nitrogen yields on the Hills property match these calculations will be partly a function of the extent to which the characteristics of development matches the details and practices outlined in the PDD. Moreover, as more detailed information of the manner in which the Hills PDD may be developed and operated become available and as actual data is collected, these hypothetical scenarios and calculations could and probably should be refined. If the Hills PDD is approved

and The Hills at Southampton is developed, stringent enforcement along with careful monitoring of the development, watershed, groundwater, surface waters, and surrounding ecosystems will be required to assure optimal environmental outcomes.

Table 1. Nitrogen yields for the Hills property for the DEIS, as well as specific changes made to the FEIS and considered in this report for the Town of Southampton. Values are in pounds of nitrogen per year.

	Existing	Hill PDD	As of right, maximum	As of right, lower	Comment
DEIS	1,210	4,128	3,455	1,738	Reported in March
Fertilizer cap	1,210	3,371	3,455	1,738	2 lbs/1000 sq. ft. cap on applied fertilizer
Hills STP	1,210	3,041	3,455	1,738	STP for the PDD treating to 10 mg/L
School STP	1,210	2,706	3,455	1,738	STP for the school treating to 10 mg/L
Community septic upgrades	1,210	2,322	3,455	1,738	Using new technologies that treat to 19 mg/L
Fertigation, conservative estimate	1,210	2,041	3,455	1,738	Considers 2mg N / L groundwater
33 acres with 30 homes	1,210	2,041	4,278	2,122	Build out of 30 homes on 33 acres
Pine Barrens Credits, 30 homes	1,210	2,041	5,130	2,484	30 additional units via purchase of Pine Barrens credits
FINAL	1,210	2,041	5,130	2,484	Total yields

Exhibit D

Town of Southampton

The Hills at Southampton MUPDD Application

SEQRA Findings Statement

November 27, 2017

State Environmental Quality Review Act
ENVIRONMENTAL IMPACT STATEMENT
FINDINGS STATEMENT

*The Hills at Southampton
Mixed Use Planned Development District*

Lead Agency: Town Board of Town of Southampton
116 Hampton Road
Southampton, New York 11968

Applicant: DLV Quogue, LLC
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I. Introduction

This document is the Statement of Findings which completes environmental review of the application by DLV Quogue, LLC ("Applicant") to the Town of Southampton Town Board (the "Town Board") for a proposed Mixed-Use Planned Development District (MUPDD) known as "The Hills at Southampton" (the "Project"). The proposed project site is located in the hamlet of East Quogue, Town of Southampton, Suffolk County, New York, and is comprised of four parcels totaling 591 acres. The Zone Change application requires discretionary approvals and as a Type I Action is subject to the requirements of the State Environmental Quality Review Act (SEQRA). Accordingly, the Town Board has coordinated with involved agencies and upon no objection has assumed Lead Agency status for this environmental review process. .

Within the approximate 591-acre project site, development is proposed within 165.53 acres and 424.14 acres would be permanently preserved as open space. The Project would be developed as a resort use comprised of 118 seasonally-occupied housing units, a 97.81 acre private golf course and a 37,860 square foot three-story structure that will contain ten (10) of the seasonal dwelling units totaling 24,000 square feet, a private clubhouse, below-grade parking, a maintenance area, a management office, and space for mechanical equipment and storage..

The Project would also include infrastructure improvements such as a private access road that would traverse a separate parcel and connect with Lewis Road, internal private roads, stormwater management and other infrastructure improvements, and accessory structures and facilities related to project operations (e.g. groundwater pumping wells, operational and maintenance structures for the golf course). Outside of the proposed development area, the Proposed Project would provide 424.14 acres of preserved open space and public trails.

This Statement of Findings is the final step in the SEQRA process as outlined in Title 6 of the New York Code of Rules and Regulations (6 NYCRR) Part 617, with statutory authority and enabling legislation under Article 8 of the NYS Environmental Conservation Law (ECL). During the preparation of both the Draft Environmental Impact Statement (DEIS) and the Final Environmental Impact Statement (FEIS), the Southampton Town Board completed a coordinated review with involved agencies. As the initial step in the environmental review process, the Town Board determined that the proposed project is a Type I Action pursuant to SEQRA, and the regulating provisions of 6 NYCRR Part 617 and that the Town Board would be the Lead Agency in this environmental review. As Lead Agency, the Town Board then issued a

Positive Declaration on April 14, 2015. The Town Board also conducted a DEIS scoping process in conformance with 6 NYCRR Part 617.8 to allow comment on the Draft Scope of Work and accepted both spoken and written comments on that Draft Scope. A Final Scope of Work was then issued on July 1, 2015. A DEIS was then prepared based on the Final Scope. The DEIS, accepted as complete by the Town Board on October 12, 2016, described the Proposed Project, including the project site and area resources, disclosed the potential environmental impacts of the project, presented measures to mitigate adverse impacts, and examined alternatives to the Proposed Project.

Upon acceptance of the DEIS as complete, the public review period commenced and the Town Board scheduled a DEIS public hearing on November 7, 2016. At the close of that hearing, the Town Board also determined that additional public hearings and an extended public comment period on the DEIS were appropriate. Thus, additional public hearings were held on December 5, 2016, January 10, 2017, and February 7, 2017. The Town Board also accepted all written comments on the DEIS through April 1, 2017.

As required by SEQRA, an FEIS was then prepared to address all substantive comments made on the DEIS during this review period and described the following changes to the Project and its proposed community benefit package: (a) inclusion of tertiary wastewater treatment for the entire development; (b) funding for the upgrade of private wastewater treatment systems associated with existing development in the Weesuck Creek watershed; (c) installation of a wastewater treatment system at the East Quogue Elementary School; (d) dedication of 4 acres of land to the Suffolk County Water Authority (SCWA) for a water supply wellfield; (e) providing affordable housing funds to be utilized in the Hamlet of East Quogue in accordance with the Long Island Workforce Housing Law; (f) acquisition and sterilization of thirty (30) Pine Barren Credits within the Town of Southampton to account for the nitrogen equivalent of the golf course, where the sterilization of such credits will result in no additional density or impact to the associated school District; and (g) the proposed preservation of a 33-acre parcel at the head lands of Weesuck Creek, with public trails with a public trail system to be developed in conjunction with the Town Trails Advisory Board.

The FEIS was accepted as complete by the Town Board on September 14, 2017. The FEIS concluded that the proposed Project, of all the alternatives considered, “offers the greatest level of protection to the environment and the greatest set of benefits to the community” (FEIS, I-26).

All comments received from the public and from involved and interested agencies were carefully considered during the DEIS and FEIS preparation processes and in preparing this revised Statement of Findings and corresponding local law, including but not limited to the most recently received:

- “Analysis of Nitrogen Loading rates from the Hills PDD based on the Final Environmental Impact Statement” Gobler, Christopher J., Stony Brook University, School of Marine and Atmospheric Sciences, August 2017
- “Updated Analysis of Nitrogen Loading rates from the Hills PDD based on the Final Environmental Impact Statement”, Gobler, Christopher J., Stony Brook University, School of Marine and Atmospheric Sciences, October 2017;
- On October 26, 2017 by Resolution 2017-335, the Planning Board issued comments pursuant to §330-244H;
- On November 1, 2017, the Suffolk County Planning Commission issued its comments on the subject PDD application pursuant to General Municipal Law. Based on the recommendations within the Supplemental Staff Report dated October 27, 2017, the Planning Commission voted to recommend approval of the Project application and stated

that “the proposed action conforms to the recommendations of the East Quogue Land Use Plan and GEIS, as well as the Town’s PDD zoning ordinance”;

- On November 6, 2017 the Suffolk County Water Authority (SCWA) submitted comments on the FEIS;
- On November 15, 2017, the Conservation Board submitted revised comments pursuant to §330-244H;

II. Findings

1. Geological Resources

- (i) To the extent feasible, the existing topography of the Project site will be preserved or followed in developing the site plan.
- (ii) Prior to any soil disturbance, the erosion and sediment control measures required in an approved Stormwater Pollution Prevention Plan (SWPP) will be installed. This would prevent any significant adverse soil erosion and sedimentation impacts during construction.
- (iii) Some development will occur within all of the various soil types present on the Project site, as described in the DEIS. Soils exhibiting limitations related to sandy surface layer consist of types CpA, CpC, CpE, CuB, P1A, P1B and P1C which comprise approximately 73% of the subject property. The limitation of a sandy surface layer is not expected to be an impediment to locating roads, parking, buildings or related infrastructure.
- (iv) Soils exhibiting limitations related to slopes consist of CpC, CpE, HaB, P1B, P1C and RdB soils which comprise 52.9% of the Project site. The limitation of slopes may affect the installation of sewage disposal fields, home sites, streets and parking lots as well as the establishment of landscape vegetation related to concerns of providing stable surface areas to properly control erosion and drainage. Impediments with respect to a sandy surface layer will be managed through soil preparation for the intended use. The Project site master plan has been designed to take slope constraints into consideration- roads have been placed in low slope areas and home sites are planned in areas with construction areas of flatter surfaces. Planned grading of strategic locations of the site will be necessary to provide appropriate and stable surface areas to allow development of the proposed Project.
- (v) Establishment of fertilized turf and landscaped areas is limited to 15% of the Project site which is compliant with the Town’s Aquifer Protection Overlay District (APOD) Standards.
- (vi) Soils will be amended to establish healthy growing conditions and nutrient and water retention properties needed to support the limited areas of landscaping. In the case of the proposed Project this may potentially affect lawns, ornamental shrubs and golf course turf grasses. The potential impacts related to this limitation with respect to erosion potential and re-vegetation will be overcome by using proper grading techniques and erosion control measures, installing proper drainage and using suitably-adapted drought tolerant indigenous vegetative species for landscaping as well as site stabilization and restoration.
- (vii) STP facilities will be placed in good leaching soil and design will ensure adequate depth to water below leaching structures given the observed and published soil characteristics and the depth to groundwater. Project review will require test holes during Town site plan review

and SCDHS review for locating the STP. Though not expected, if unsuitable material is encountered, it will be removed and replaced with good leaching material to ensure proper functioning of STP leaching areas as well as for stormwater catchment.

- (viii) Consistent with the requirements of the Central Pine Barrens Plan, natural recharge areas and/or drainage system designs will be employed as part of the Project site plan design.

2. Water Resources

- (i) The Proposed Project site is located in Groundwater Management Zone III, and ultimately the groundwater in this subwatershed flows into Weesuck Creek and Western Shinnecock Bay. Of particular concern is nitrogen loading, which is responsible for the decline in surface water quality as evidenced by algal blooms which cause an increase in brown and red tides, reduced levels of shellfish and other habitat impacts. The proposed project complies the policies and plans for this area that are designed to protect water resources including the Town of Southampton Aquifer Protection Overlay District (APOD), the Central Suffolk Special Groundwater Protection Area (SGPA), and the Central Pine Barrens Comprehensive Land Use Plan (CLUP).
 - a. The APOD imposes limits on the disturbance of natural vegetation and in this case, 71.77% of the existing natural vegetation must be left undisturbed, it also restricts fertilized vegetation to 15%.
 - b. The goals and objectives of the CLUP will be met for the Compatible Growth Area, namely:
 - i. preserve natural vegetation in large, unbroken blocks (86.92 acres and 101.91 acres);
 - ii. there will be no significant discharges within 200 ft. of any public supply well
 - iii. The PDD serves as a receiving area for 30 credits originating within the Core Preservation Areas of the Town.
- (ii) The area to be developed as part of the Proposed Project site does not immediately adjoin to existing surface water, ponds or wetlands; however, the headwaters of Weesuck Creek as well as Shinnecock Bay are downgradient of the site. Nitrogen impact reduction has been a focus of the Project and comprehensive impact analyses were provided in the FEIS. It is expected that the proposed project, inclusive of its land preservation and wastewater treatment system, will have a nitrogen concentration of less than 1.0 mg/l, which conforms to the nitrate-nitrogen guideline of 2.5 mg/l per Central Pine Barrens' Comprehensive Land Use Plan and is less than what could be achieved under alternative development scenarios. Overall, the proposed project results in the lowest nitrogen load of all alternatives analyzed. With the proposed irrigation-fertigation system that will utilize groundwater that already contains high concentrations of nitrogen and take it out of the system, the project is expected to result in a net negative nitrogen load which is beneficial to underlying groundwater within the Central Pine Barrens, as well as downgradient streams, bays, and coastal resources.
- (iii) The applicant has proposed an Integrated Turf Health Management Plan (ITHMP). Among the design requirements of the ITHMP is a design requirement for liners under the greens to capture drainage water. This drainage water would then be collected and treated or reused for irrigation.

- (iv) The use of groundwater with elevated nitrogen levels for both irrigation and as a fertilizer source would be supplemented with fertigation which is projected to improve local groundwater and minimize project impacts on groundwater, particularly with respect to nitrogen.
- (v) In addition, the applicant has agreed to limit the amount of fertilized land to 88 acres (e.g., greens, tees). The ITHMP and fertilizer limits will be implemented through a Management Program document reviewed, approved and implemented by the Town which will establish protocols for the use of fertilizer, pesticides, and ground water monitoring. The local law will require the ITHMP to establish a maximum application of fertilizer to no more 2.5 lbs/1000 SF/yr of nitrogen to greens, tees and fairways and 1.0 lbs/1000 SF/yr to rough and residential areas. Further, if there is any violation of said protocols all fertilization and pesticide application activities shall halt, and the use of the golf course shall cease until such time as it can be determine the cause of the violation and the corrective action can be identified. In addition, the Town would have the ability to impose a substantial fine for any violations of the protocols established in the ground water monitoring and protection program. The monitoring would be based on submitted reports to the town and oversight by the Town. The town could also inspect the site to monitor compliance and would also have data from the monitoring wells (see below).
- (vi) The proposed Integrated Turf Health Management Plan (ITMHP) includes the limited use of certain environmentally sensitive pesticides that may be used on the site to achieve reasonable pest control and to maintain healthy turf at the proposed golf course. The Town Board is aware that every pesticide product which is used, distributed, sold or offered for sale in New York State must be registered by the NYS Department of Environmental Conservation. Under Sections 33-0301 and -0303 of the Environmental Conservation Law (ECL), the department has sole jurisdiction in all matters pertaining to the distribution, sale, use and transportation of pesticides. They also regulate the registration, commercial use, purchase and custom application of pesticides. As described by NYSDEC, *"pesticides, properly used for the control of insects, fungi, weeds, and nematodes, and as defoliants, desiccants, and plant regulators and for related purposes, are valuable, important and necessary to the welfare, health, economic well-being and productive and industrial capabilities of the people of this state; however, such materials, if improperly used, may injure health, property and wildlife."* It is noted that review of specific compounds and chemical structures contained in pesticide formulations labeled for the control of pests commonly associated with turfgrass management are pre-empted by the State; however through the pesticide registry those labeled for use here are tested and formulated specifically for Long Island because of the sole- source aquifer.

In the Mixed Use PDD alternative, the entire property, which includes the single family dwelling lots, will be managed and maintained by a single entity that will be required to comply with the ITMHP as described in the DEIS and FEIS. Integrated Pest Management (IPM) is a decision making process that requires training in all phases of turfgrass management, including biology, soil science, pest management, and cultural practices. It involves establishing pest response threshold levels that are consistent with the intended use of the turf, intensive field monitoring, good record keeping, and consideration of different pest control strategies.

The keystone of a turfgrass IPM program is frequent, careful monitoring of pest activity. If the monitoring program is successful, pests can be detected early and controlled before the

threshold level is exceeded. By keeping good records of previous pest activity, turfgrass managers will know where and when to look for subsequent pest issues and utilize certified applicators to apply registered pesticides to targeted areas when needed.

Certified pesticide applicators are subject to NYSDEC requirements in terms of pesticide reporting. The Pesticide Reporting Law requires every certified commercial applicator to report regulated pesticide activities from January 1 through December 31 of each year. This report requires detailed information on the type, area and quantity of pesticide used in an application. This type of oversight is typically unavailable for a single family subdivision in an environmentally sensitive area as most people apply their own pesticides and fertilizers, which has a higher likelihood of misuse and over-application than that of a professional who is charged with maintaining the grounds to the highest standard. A certified pesticide applicator is also educated on best management practices, including those that minimize aerial drift and curtail unintended exposure, as well as following personal protection protocols required by the label and New York State law. The MUPDD will have monitoring wells and reports to confirm that the standards are routinely met, and the ITHMP will require that turfgrass/sod come from approved Long Island sources.

Implementation of the ITHMP is intended to provide a level of safety to ensure that no impact occurs to people, wildlife, water resources or the local ecology as a result of the action. The whole premise behind an integrated turf management program is to promote the health and vitality of the soil. Utilizing the strategies in the program will result in a more efficient use of pesticides, which translates into a reduction in need for pesticide use. With the safety, reporting and monitoring protocols followed, the limited use of pesticides as outlined in the ITMHP is not expected to result in any significant impacts. This expectation has been factually demonstrated within the other two monitored golf courses within the Town, namely Sebonac and The Bridge.

- (vii) In addition to the above, the Applicant will be required to engage in a regular sampling program to monitor groundwater quality, which is necessary to ensure that the Proposed Project does not adversely impact water resources. The groundwater monitoring program for the proposed golf course is proposed to be comprised of two parts: 1) monitoring the volume of fertilizer being applied; and 2) monitoring any impacts on groundwater quality from the fertilizer applied and all applied pesticides potentially leaching into groundwater. As part of the groundwater monitoring program a total of fourteen (14) groundwater monitoring wells and nine (9) lysimeters will be installed throughout the golf course to monitor the water quality beneath the golf course four times per year. The irrigation pond will also be monitored.
- (viii) The applicant has developed and proposed a program to monitor groundwater quality, which is necessary and sufficient to ensure that the project does not adversely affect water resources. Under this proposed monitoring program, a five-year sampling plan will be supplemented with a quarterly sampling of nitrogen and the pesticides that may have been used during the previous twelve-month period. An independent laboratory, acceptable to the Town, will conduct all water testing. The sampling would be conducted under the direction of an entity acceptable to the Town.
- (ix) If a pesticide or nitrogen species is detected above a response threshold in any lysimeter or groundwater sample: (a) The use of the pesticide and or nitrogen fertilizer will be stopped; (b) the lysimeter or well will be tested again as soon as practically possible to confirm the

presence of the pesticide/nitrogen and to see if the concentration is rising; (c) the environmental (rainfall after application) and management (amount of irrigation after application, amount of pesticide-fertilizer application, etc.) conditions at the time of the pesticide-fertilizer application and immediately after would be documented; d) when nitrate concentrations drop below 2 mg/L fertilization can resume; e) when the concentration of a pesticide drops below the response threshold its use may resume.

- (x) Based on an independent review of the proposed project¹ it is concluded that with the above measures in place, the proposed project would not result in any significant adverse impacts on groundwater or surface waters.
- (xi) The IHTMP that contains the components described above will be subject to final review and approval by the Town with a requirement for the submission of regular monitoring reports.
- (xii) The Suffolk County Water Authority has expressed the desire for new wells on the project site. The Applicant has included in their site plan approximately 4 acres for a new well field to be dedicated to the SCWA as part of the proposed public benefits. The Planning Board questioned if the dedication of 4 acres for a well site was considered a public benefit if it was instead a project requirement. The DEIS included correspondence from the SCWA dated September 21, 2015 that indicated this agency did not anticipate any water quality impacts due to the proposed project. The letter further indicated that once constructed, the proposed well(s) on the property would produce high quality water for the foreseeable future. After the FEIS was deemed complete, the SCWA submitted another letter dated November 6, 2017 indicating that they will be providing water for domestic consumption and fire suppression for the 118 housing units and clubhouse. It further states that "the developer will be responsible for making system improvements including distribution system piping, booster upgrades and a new booster station in order to ensure water is available". The letter further discusses the irrigation well plan and the conveyance of the land for SCWA to use as a new well field and storage. This dedication is not required as a condition of approval from SCWA but the system improvements are. Therefore, the Town Board still considers this dedication to be a public benefit to all users within Suffolk County Water Authority jurisdiction.
- (xiii) The project will conform to all Suffolk County Department of Health Services regulations for the disposal of wastewater. Additionally, an on-site sewage treatment system will be installed and will consist of tertiary treatment with a nitrogen treatment level of 10 mg/l or less. The STP shall be located in the northwestern corner of the Project Site. This location is in-line with groundwater flow that shows elevated nitrogen concentrations from upgradient historic/current farming is on the west side of the site and would situate the STP as far as possible, approximately 1.5 miles, from downgradient wetlands and the surface waters of Weesuck Creek and Shinnecock Bay. Thus, this proposed facility is located at the greatest distance possible from surface waters. In accordance with applicable SCDHS requirements, an area for this facility has been set aside on the site plan that is twice the building footprint in size, in the event that expansion at a later date is necessary. The site plan also includes an access drive and leaching area, with additional area for leaching area set aside for future expansion, if required by the SCDHS. The Applicant has presented information that this system can potentially achieve compliance the NYS effluent limitation

of 10 mg/l and is expected to perform consistently with much lower total nitrogen concentrations. SONIR modeling has also been provided in this FEIS assuming a 10 mg/l nitrogen effluent with the proposed project, noting that the residential density is still consistent with the CR-200 (5 acre) zone and there is a significant amount of open space and undisturbed natural vegetation to provide for aquifer recharge.

- (ix) An independent review of the proposed project by Dr. Christopher Gobler at Stony Brook University concluded that the PDD alternative with the 33 acre parcel preservation and other measures offered as community benefits has the greatest potential to reduce and mitigate nitrogen loading in this watershed.

3. Ecological Resources

A. Aquatic Ecology

- (i) There are no existing wetlands within the development area of the project.
- (ii) As described within the DEIS and FEIS, the proposed Project would not result in any indirect impacts on the water quality of Weesuck Creek or Shinnecock Bay and therefore is not expected to result in any impact on the aquatic ecology of these resources.

B. Terrestrial Ecology

- (i) Clearing limitations will conform to Town of Southampton Central Pine Barrens Overlay District and the limitations of the Central Pine Barrens Comprehensive Land Use Plan (CLUP). The proposed project has put heavy emphasis on the preservation of existing natural resources. Therefore, of the total 591 acres, only 165.53 acres (about 28 percent) will be developed as part of the proposed project. Outside of the proposed development area, the Proposed Project would provide 424.14 acres (about 72 percent of the site) of open space preservation area with public trails. Additionally, a 33 acres site located in the head lands of Weesuck Creek will be preserved, which could have potentially yielded 32 additional dwelling units.
- (ii) The majority of the existing natural vegetation on the site is pitch pine forest habitat. There are also areas that have been previously disturbed. Clearing is necessary to implement the proposed project; however, this clearing is proposed to be concentrated in areas that are for the most part, previously cleared or disturbed. The project will concentrate development on 142 acres of land to be cleared, of which 44 of those acres have been previously cleared. The previously disturbed areas will be used for construction of the residential units, roads, and accessory structures. Reuse of previously disturbed areas is proposed to minimize impacts on woodland/Pine Barrens habitat. With the proposed project approximately 115 acres of pitch pine forest will be cleared; however, the proposed project will also preserve 424 acres of the site with a significant amount of land offered for dedication to the Town of Southampton. The local law will require limits of clearing to be established within the project development site prior to commencement of construction with routine monitoring and surveillance during the process to ensure that the clearing and grading activities will not negatively impact the surrounding ecosystem.
- (iii) The proposed subdivision and site design of the project supports preservation of natural vegetation in large unbroken blocks that allow contiguous open spaces to be established. The subdivision and golf course site designs are found to be configured in a manner that

prioritizes the preservation of native Pine Barrens vegetation to the maximum extent practicable.

- (iv) Consistent with the CLUP, the preservation of the above-referenced 424 acres will maintain the essential character of the existing Pine Barrens environment, including the protection of indigenous plant and animal species and their associated habitats to the maximum extent practicable. As described, the proposal centers the development on the previously disturbed areas to maximize retention of the existing Pine Barrens habitat. Consistent with the Recommended Plan described in the East Quogue GEIS, any other disturbed area in the Core is not being utilized as a deduction in calculating vegetative clearing limits.
- (v) Investigations were undertaken for the DEIS to confirm that areas of the site that may be sensitive for rare, threatened, or protected species have been avoided. In addition, as part of the site plan review and pre-construction, a survey of areas proposed for development will be performed to confirm that none of the protected species that are known to inhabit this area of the Pine Barrens would be impacted by any proposed clearing or project construction. Based on these investigations, if protected species are identified, the Applicant has proposed as mitigation measures that these areas would be avoided by the site plan and/or other options would be implemented, such as plant rescue/relocation. If transplanting is determined to be possible, a professional horticulturalist will perform the transplanting of the species to optimize survival. Transplanting of this species would be the responsibility of the Applicant and would be performed under the supervision of the Applicant in accordance with a protocol approved by the Town prior to the commencement of construction activities.
- (vi) With the proposed project, approximately 25 acres of former farmland will be restored through a planting plan that is proposed to include a combination of native woodland, shrubland and grassland/meadow habitats to be provided under the supervision of a certified ecologist. Detailed restoration plans will be provided during site plan review. Only native species will be utilized for any restoration work to ensure that native habitat restoration goals are achieved.
- (vii) As described in the FEIS and above, in addition to the large tracts of land proposed for preservation, the 33 acres known as the Parlato parcel will also be sterilized from development through the TDR process and this added benefit will not only reduce Nitrogen loading but will also increase the open space assemblage in the area and eliminate development pressure. The portion of the project area designated as a Critical Resource Area will also be preserved. In total the project is found to promote the preservation and conservation of open space, natural resources, diverse ecological communities, species diversity, and groundwater quality and quantity and provides connection of open space areas. Maximization of unfragmented open space will support terrestrial ecosystem functions by allowing for plant and animal species to have suitable habitat as well as migratory corridors for climate change adaptation.

4. Transportation Resources

- (i) A traffic analysis for the proposed project demonstrates that the Proposed Project would not result in any significant adverse impacts and said Traffic Impact Analysis was peer-reviewed by the Town's Consultant, AKRF. An operational traffic monitoring program will be required to be prepared and submitted with the site plan to confirm that traffic circulation at the intersection of the proposed access road and Lewis Road is operating acceptably as identified in the traffic analysis.

- (ii) The FEIS identified preliminary grading and associated quantities of material to be filled or cut and removed as excess material which is expected to total up to 350,000 cubic yards. Although the applicant identified additional options transport this material to the adjoining mine site, as outlined below, there will be no significant impact to traffic as a result of the transport of the fill material utilizing Lewis road as was analyzed within the DEIS.

Option 1: The existing farm road on the western adjacent property, which would avoid commercial vehicle use of Lewis Road.

Option 2: Lewis Road via the proposed roadway to the proposed project from Lewis Road.

Option 3: A temporary conveyor belt system would be installed for transporting material to East Coast Mines and the farm road or Lewis Road would be used to import soils to the Hills site. This option reduces vehicle trips on Lewis Road and transports the excess soils to the sand mine pit.

Option 4: Construct a temporary construction haul road over the adjacent western farmland property to East Coast Mines.

Under options that include the farmland, the proposed project must obtain a license agreement with the owner of property. In addition the Town's agricultural easement requires the Town permission to temporarily utilize the existing farm road. The Planning Board recommends that the applicant pursue the alternative that would convey the sand from within the site. As stated in the FEIS (Page 1-19), the applicant will continue to pursue the potential to utilize a conveyor belt system or temporary haul road (options 3 & 4). In the event that options 3 & 4 are not feasible, in order to minimize the potential impact to Lewis Road due to the transport of the subject fill material between the Hills property and East Coast Mines, a performance bond will be required to ensure Lewis Road is restored to pre-construction conditions.

5. Land Use, Zoning, and Comprehensive Plans

- (i) The site is currently undeveloped and would be developed by the Proposed Project in conformance with current plans and policies. The current zoning on the site is CR-200 with several overlay districts including the Town's Aquifer Protection Overlay District (Article XIII, Sections 330-66 and 330-67), the Town's Central Pine Barrens Overlay District (Chapter 330, Article XXIV, Sections 215 to 221). The clearing restrictions within these plans have been developed to ensure the highest level of groundwater recharge and vegetation protection and therefore the Board is requiring strict adherence to the percentage of clearing established within these plans. The local law accounts for delineating the limits of clearing and demarcation of any large caliper trees within the development area that can be protected. The Proposed Project would be developed under the Town's MUPDD requirements (§ 330-240 E) and this proposed zone would not conflict with the objectives of any other zoning districts in the area. The proposed project is consistent with the planning objectives of the Southampton Tomorrow 1999 Comprehensive Plan Update, the 1993 Western Town Generic EIS, the East Quogue GEIS and adopted Recommended Land Use Plan, the Special Groundwater Protection Area (SPGA) and the Central Pine Barren Comprehensive Land Use Plan. The most recently adopted East Quogue GEIS and Recommended Land Use Plan indicates the subject parcels should be developed as a mixed use proposal that combines housing, resort/recreation, and open space uses with protected areas of natural resources. It articulates the goal to *"encourage uses that will generate positive net tax ratables, while having little or no adverse financial impact on the school district"*. The Recommended Plan also indicates that the number of potential housing units

could be increased (by no more than 15 percent) if the development can submit satisfactory and sufficient documentation to the Town confirming a housing profile of only seasonal or resort type residences.

- (ii) In the subject proposal, the number of housing units conforms to the total amount that would be allowed in the underlying CR200 (5 acre) residential zone. There is no increase in residential density as part of the subject PDD proposal. The proposed action does allow for a private golf course use that is accessed through a membership program and the construction of a clubhouse and various amenities that will be provided for the exclusive use of the residents/members. The nitrogen component of the golf course use is accounted for through the extinguishment of Pine Barrens Credits and complies with the purpose and intent of sending/receiving areas as well as §330-246B where there is no substantial increase in the number of dwelling units or population within the Town because development has been redirected in order to channel growth and preserve more ecologically sensitive lands. The PDD proposal represents a density reduction plan in that the thirty (30) Pine Barrens Credits transferred will not result in actual residential density from the Core Preservation Areas within the Town of Southampton. Further, the proposal was amended within the FEIS to include the preservation of an additional 33 acre parcel (Parlato South) that will reduce density in the East Quogue Hamlet by at least 32 homes and the corresponding offset of nitrogen loading in this watershed is significant.
- (iii) Discovery Land has offered a restrictive covenant for the residential units that confirms the seasonal use of the housing units and the local law has added safeguards to be sure that the covenants are enforceable. The golf course use itself is also seasonal in nature (April-November) which is considered desirous to the community versus the alternative of a year-round residential subdivision. The local law has been amended to allow for limited access for Town residents at an affordable rate so that in addition to the open space and trail system being dedicated to the Town, Town residents can also enjoy the recreational resource of the golf course use.
- (iv) With respect to open space and public access, under existing conditions, the site is private property and provides no public access. The Applicant is proposing 424 acres of preserved land with property dedication to the Town of Southampton and is also proposing to implement a public access and a public trails plan. It is proposed by the applicant that this trails plan be further advanced in coordination with the recommendations of the Town's Trails Advisory Board. The Applicant will also coordinate with the Town on the maintenance of the public trail system. The Town Board finds that providing public access and a trails system as part of this application is a necessary and important component of the project in terms of providing public benefits.
- (v) The Recommended Plan analyzed in the East Quogue GEIS and adopted as part of the Comprehensive Plan was found to be consistent with the Article 57 and Central Pine Barrens Comprehensive Land Use Plan by preserving contiguous blocks of open space and utilizing already disturbed areas for development. Consistent with the Recommended Plan, the proposed action would construct seasonal housing and recreation (golf) uses with state-of-the-art approaches to protecting existing environmental conditions and preserves 424 acres of Pine Barrens land and 33 acres of land in the headwaters of Weesuck Creek. The proposed project is therefore consistent with the Recommended Plan and through the project-specific EIS process, it is found to be a development proposal that complies with all relevant Planning documents and studies while minimizing/mitigating impacts to the greatest extent practicable

while providing many social and economic benefits to the East Quogue Community. Therefore, it is concluded that the Proposed Project is consistent with the above-referenced zoning requirements, plans, and policies.

6. Community Facilities and Services

- (i) The Proposed Project would place limited, if any, demands on local facilities and services and has proposed community benefits that will support community services.
- (ii) Based on the occupancy restriction placed on the subject dwelling units as proposed by the project, the Proposed Project would not generate any school children or demands on the East Quogue Union Free School District. However, the proposed project would generate tax ratables in the district as a net benefit to the school district. Therefore, it is concluded that the fiscal impacts on the school district are positive, particularly when compared to other possible alternatives (see the discussion below).

7. Community Character

- (i) The Proposed Project will not result in any adverse impacts on community character.
- (ii) With respect to visual and scenic resources, a comprehensive assessment of the Proposed Project's potential to impact visual and scenic resources was performed. The assessment consisted of: 1) characterizing the existing visual resources; 2) identifying potentially impacted views; 3) identifying key views that may change due to project development; 4) preparing visual simulations at the selected viewpoints that show the before and after conditions or view impacts; and 5) evaluating the impact of change in public views. Based on this analysis and a review of the proposed site plan and buffers, the proposed project will not impact locals view or the visual character of East Quogue. Wooded buffers that were proposed during the MUPDD review as a screening buffer from adjacent properties will be mandated.
- (iii) With respect to affordable housing, it is recommended that the Applicant provide \$2,659,200 to fund affordable (workforce) housing in accordance with calculations outlined in the Southampton Town Code, Chapter 216, Section 216-9. Given the isolated nature of the subject property and the proposed seasonal objective of the project, this is the preferred approach in lieu of providing on-site affordable housing. With this funding, it is concluded that the Proposed Project would be compliant with the Town's requirements to provide workforce (attainable) housing.

8. Cultural Resources

- (i) Archeological studies of the property have been completed. Based on these studies it is determined that the proposed project would not result in any impact on archaeological features.

9. Construction Impacts

- (i) As described in greater detail in the DEIS and the FEIS, the Proposed Project has committed to a number of measures to avoid impacts during construction include but are not limited to: alternative methods for soil importation that are under consideration (see "Geological Resources," above); vehicular construction access will be limited to Lewis Road; repair and replacement of local roads that be damaged as a result of construction; material storage and soil stockpiling on site will only be at locations that do not impact the adjacent community; noise attenuation and control measures will be implemented during construction; implementation of a Stormwater Pollution Prevention Plan (SWPPP); and areas within the site to be dedicated for parking and materials storage will be located in the vicinity of the

proposed maintenance area and not near existing residences.

- (ii) A construction management plan will be prepared and submitted to the Town for review and approval prior to construction to ensure the mitigation measures and construction approaches described in the DEIS and FEIS (e.g., truck and vehicle traffic trip reduction, noise and fugitive dust controls) are properly implemented during construction.

10. Implementation of Mitigation Measures

The Applicant proposes to implement all of the above impact avoidance and mitigation measures cited in the DEIS and the FEIS and summarized above.

11. Alternatives

A range of alternatives to the Proposed Project were examined in the DEIS and FEIS including the no action alternative, residential subdivision alternatives under the current zoning, reduced density alternatives, alternative site designs and technologies, and a lesser impact alternative. The FEIS also examined a maximum residential alternative that could also generate up to 137 units through the use of Pine Barrens Credits and density incentives permissible under the Long Island Workforce Housing Act and an alternative that considered a lower density residential development with a horse farm that came out of the DEIS process. The FEIS examined in detail all of the alternatives and their associated impacts. The alternatives analysis within the FEIS demonstrates that all of the alternatives considered would have equal or greater adverse impacts and would not provide the economic or social environmental benefits of the Proposed Project.

Table one is a condensed comparative analysis between the proposed Mixed Use PDD as recommended in the East Quogue GEIS and the existing zoning alternative utilizing the available facts that have been publicly discussed throughout the SEQRA process. The proposed project that includes the transfer of Pine Barrens Credits from the Core to account for the golf course use and sterilizes an additional 33 acres that can otherwise be developed, again in this limited comparison is still the only option that has the least associated impact while providing the most public benefit.

III. Certification

State Environmental Quality Review Act
FINDINGS STATEMENT SIGNATURE PAGE

Having considered the Draft and Final Environmental Impact Statements for the Subject Action and having considered the preceding written facts and conclusions relied upon to meet the requirements of 6 NYCRR Part 617.11, this Statement of Findings certifies that the Southampton Town Board as Lead Agency in the subject matter has:

1. considered the relevant environmental impacts, facts and conclusions disclosed in the SEQRA documents;
2. weighed and balanced relevant environmental impacts with social, economic and other considerations;
3. provided a rationale for the agency's decision;
4. met the requirements of 6 NYCRR Part 617; and
5. found that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the Subject Action is the one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigation measures and safeguards that were identified as practicable.

By the Town Board of the Town of Southampton,

Signature of Responsible Official

Name of Responsible Official

Title of Responsible Official

Date

Copies of this Findings Statement have been filed with:

Lead Agency
Involved Agencies

TABLE 1
COMPARATIVE ANALYSIS
THE HILLS AT SOUTHAMPTON MUPDD AND EXISTING ZONING ALTERNATIVE

Parameter	The Hills at Southampton Mixed Used PDD					Per Existing Zoning					Difference between The Hills MUPDD vs Existing Zoning Alternative ¹		
	Proposed Project	30 Pine Credits Retired	Subtotal	32.6 Acres Preserved	Total The Hills MUPDD	CR-200 PRD Subdivision	6 Pine Credits Transferred ²	Long Island Workforce Housing Act Units ³	Subtotal PRD Subdivision	32.6 Acres R-40 PRD Subdivision		Total Per Existing Zoning	
Number of Dwelling Units	118	0	118	0	118	118	6	13	137	32	169	-51	Number of Dwelling Units
Proposed Clearing (Acres)	149.75	0	149.75	0	149.75	159.20	0	0	159.20	24.45	184	-34	Proposed Clearing (Acres)
Preserved Natural Areas (Acres)	441.25	30	473.85	32.6	506.45	395.80	6	0	401.80	8.15	410	97	Preserved Natural Areas (Acres)
Buildings Floor Area (sqft) ⁴	591,560	0	591,560	0	591,560	970,096	49,327	106,875	1,126,298.25	128,000	1,254,298	-662,738	Buildings Floor Area (sqft.)
Nitrogen Load (lbs/year) ⁴	622	-706.44	-84.32	-706.44	-790.8	4,942.90	251.33	544.56	5,738.79	1340.45	7,079	-7,870	Nitrogen Load (lbs/year)
Weekday AM Peak Hour (vph) ⁷	63	0	63	0	63	92	14	19	125.00	32	157	-94	Weekday AM Peak Hour (vph)
Weekday PM Peak Hour (vph) ⁷	103	0	103	0	103	122	8	17	147.00	38	185	-82	Weekday PM Peak Hour (vph)
Saturday Midday Peak Hour (vph) ⁷	125	0	125	0	125	114	14	20	148.00	37	185	-60	Saturday Midday Peak Hour (vph)
Pesticide Use (acres) ⁵	41	0	41	0	41	207	0	0	207	24.45	231	-190	Pesticide Use (acres)
School-Age Children Enrollment	0	0	0	0	0	130	7	14	151	35	186	-186	School-Age Children Enrollment
Taxes Generated (\$/year)	\$ 7,605,819	\$0	\$7,605,819	\$0	\$ 7,605,819	\$2,565,602	\$130,454	\$282,651	\$ 3,261,358	\$ 695,756	\$3,957,115	\$ 3,648,704	Taxes Generated (\$/year)
School Taxes (\$/year)	\$ 5,681,079	\$0	\$5,681,079	\$0	\$ 5,681,079	\$1,916,347	\$97,441	\$211,123	\$ 2,436,034	\$ 519,687	\$2,955,722	\$ 2,725,357	School Taxes (\$/year)
Employees (FTE)	152	0	152	0	152	53.6	2.7	5.9	62.2	15	77	75	Employees (FTE)

1. Negative (-) represents the proposed project will have less than the existing zoning.

Positive (+) represents the proposed project will have more than existing zoning.

2. Pine Barren Credits for residential yield has to come from within the same school district.

3. Long Island Workforce Housing Act Requires automatic 10% increase in yield (: 18÷6=124 * 1(9% = 12.4) requiring 13 housing units.

4. Nitrogen Load calculation does not include fertilization.

5. Pesticide use will be managed in The Hills MUPDD through ITHMP and unmanaged by individual property owners per the existing zoning.

6. Although the FEIS determined that maximum of 1,925,760 square feet of building area for principal structures could be built per existing zoning restrictions, a .125 FAR was utilized to calculate the total building area for the existing zoning alternative, representing a more realistic number for this comparative analysis.

7. Utilized correct numbers from the DFIS, as the traffic counts included in the FEIS are incorrect.

Exhibit E

New York State Department of Environmental Conservation (NYSDEC)

"The SEQRA Handbook"* *4th Edition, 2020

(Chapter 5-G: Relevant Section on Supplemental Environmental Impact Statements)

**by
NYSDEC
Division of Environmental Permits**



Department of
Environmental
Conservation

The SEQR Handbook

FOURTH EDITION, 2020

DIVISION OF ENVIRONMENTAL PERMITS

Andrew M. Cuomo, Governor | Basil Seggos, Commissioner



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits

625 Broadway, 4th Floor, Albany, New York 12233-1750

www.dec.ny.gov

Since it was first published in March 1982, the *SEQR Handbook* (the Handbook) has been a standard reference book for local government officials, environmental consultants, attorneys, permit applicants, and the public.

DEC published the Second Edition of the Handbook in 1992, and later published the Third Edition of the Handbook in 2010, but only in an electronic version. From 2010 to the present, DEC made minor updates to the electronic version of the Third Edition of the Handbook. This Fourth Edition is a general update of the Handbook and includes coverage of the 2018 amendments to the SEQR regulation that became effective on January 1, 2019. (In addition to the *SEQR Handbook*, DEC also publishes the SEQR full and short Environmental Assessment Form (EAF) workbooks, which guide applicants, agencies, and the public through the completion of the environmental assessment forms, and the *SEQR Cookbook* (the Cookbook), which is an illustrated procedural guide through the SEQR process.)

As with prior editions of the SEQR Handbook, DEC has addressed the topics, concerns, and confusions that have been identified by users of the Handbook. As with earlier handbooks, each topic is presented in an easy-to-understand question-and-answer format.

DEC welcomes your suggestions and corrections! To send suggestions or corrections, please send an email with the proposed changes to SEQR617@dec.ny.gov. If you prefer to send suggestion or comments through the United States Postal Service, you may send them to the following address: Division of Environmental Permits (attention: SEQR Handbook), 625 Broadway, 4th Floor, Albany, NY 12233-1750.

Daniel T. Whitehead
Director
Division of Environmental Permits
Department of Environmental Conservation

March 2020

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Table of Abbreviations for Commonly Used Terms

617	refers to 617 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (<u>6 NYCRR Part 617</u>), the regulations that implement SEQR
CEA	Critical Environmental Area
Commissioner	the Commissioner of the New York State Department of Environmental Conservation, unless otherwise noted
CND	conditioned negative declaration
CZMA	Coastal Zone Management Area
CRIS	Cultural Resource Information System—a geographic information system program that provides access to New York State's vast historic and cultural resource databases developed by the New York State Office of Parks, Recreation and Historic Preservation's Division for Historic Preservation
DEIS	Draft Environmental Impact Statement
Department or DEC	New York State Department of Environmental Conservation, unless otherwise noted
DOS	New York State Department of State
EAF	Environmental Assessment Form
ECL Article 8	refers to the New York State Environmental Quality Review Act (SEQR)
EIS	Environmental Impact Statement
ENB	Environmental Notice Bulletin
FEIS	Final Environmental Impact Statement
GEIS	Generic Environmental Impact Statement
LWRP	Local Waterfront Revitalization Area
NEPA	National Environmental Policy Act (42 U.S.C. 4321, et seq.)
NYPA	New York Power Authority
OPRHP	New York State Office of Parks, Recreation and Historic Preservation
SEIS	Supplemental Environmental Impact Statement

If a lead agency concludes that review of the draft EIS revealed such significant issues that preparation of a supplemental EIS is necessary, then the rules governing preparation of that supplemental EIS (617.9(a)(7)) would apply.

12. Does SEQR require a hearing on a final EIS?

No. Neither the SEQR statute nor the regulations provide for a hearing on a final EIS.

13. Is there a comment period for final EISs?

No. SEQR requires that the lead agency and all other involved agencies must wait for at least ten days after the filing of the final EIS before making their findings and final decisions on the action. This period is not a comment period, but instead allows time for the involved agencies and any interested parties to consider the final EIS. While concerned parties, or other agencies, may comment in writing to the lead agency on the final EIS, the lead agency has no obligation to respond to comments on a final EIS.

14. Is there any value in commenting on a final EIS?

Interested parties or agencies may choose to submit comments on a final EIS to clarify points made earlier, or to identify comments that have not been satisfactorily responded to in the final EIS. These comments could influence the lead agency, or other involved agencies, in making findings and taking final actions.

15. Is a final EIS the last step in the SEQR EIS process?

No. The final step in SEQR is the preparation of findings by the lead agency and each involved agency at the time the agencies make their final decisions regarding the proposed action. Findings are made after the final EIS has been accepted.

G. Supplemental EISs

In this section, you will learn:

- What a supplemental EIS is, and
- When a supplemental EIS is required.

1. What is a supplemental EIS?

A supplemental EIS provides an analysis of one or more significant adverse environmental impacts that were not addressed or were inadequately addressed in a draft or final EIS. A supplemental EIS may also be required to analyze the site-specific effects of an action previously discussed in a generic EIS.

2. When is a supplemental EIS needed?

A supplemental EIS may be required if:

- The project sponsor proposes project changes that may result in one or more significant adverse environmental impacts not addressed in the original EIS;
- The lead agency discovers new information, not previously available, concerning significant adverse impacts,
- A change in circumstances arises that may result in a significant adverse environmental impact, or
- Site-specific or project-specific analysis of potential significant adverse environmental impact(s) is needed for actions following a generic EIS.

3. Are there criteria for determining if newly discovered information warrants preparation of a supplemental EIS?

Yes. The lead agency is directed to consider:

- The importance and relevance of the information, and
- The present state of the information provided in the original EIS.

The information must be relevant to the discussion of significant adverse environmental impacts, and important for the accuracy of the assessment of those impacts. The information should be genuinely new; that is, the lead agency would have had no reasonable means of knowing that information sooner. The lead agency should evaluate the existing EIS considering the new information to be certain that relevant issues have not already been covered in enough detail. Furthermore, the extent of the supplemental EIS should be limited to a reassessment of the relevant significant adverse environmental impacts based on the new information identified.

4. What constitutes a “change in circumstances” as applied to a supplemental EIS?

A “change in circumstances” means any change in the physical setting of, or regulatory standards applicable to, the proposed project. For example, if nearby land uses have changed since the original site assessment was conducted, or the municipality has enacted new land use rules, and these changes are relevant to significant adverse environmental impacts, then a supplemental EIS may be warranted.

5. How does a lead agency determine that a supplemental EIS is required?

When a lead agency is evaluating whether to prepare a supplement, it should examine if changes in the project, newly discovered information, or a change in circumstance have the potential to result in any new, previously undisclosed, or unevaluated impacts that may or may not have a significant adverse impact. DEC's [EAF workbooks](#) provide guidance for determining the magnitude, importance, and significance of an impact. This evaluation may take the form of a comparative memorandum. For more complex changes, DEC recommends the evaluation be further supported by use of a revised EAF when making this determination. Should the lead agency determine that a supplemental EIS is required, it must then follow the full SEQR procedures, including completion of a revised EAF.

6. At what time in the SEQR process may a supplemental EIS be required?

A lead agency may require a supplemental EIS at any time during review of an EIS. For example, the lead agency may determine, based on comments received from involved agencies or the public, to require a supplemental EIS prior to preparing a final EIS. Alternatively, if a project sponsor proposes major project changes that could change the lead agency's identification and assessment of likely significant adverse environmental impacts, a supplemental EIS may be required after the lead agency has accepted the final EIS and issued its findings statement.

For generic EISs, supplements after findings are typical. Potential need for future site- specific or project-specific analysis is inherent in the concept of generic EISs.

7. May a supplemental EIS be required by an agency other than the original lead agency?

If the original lead agency retains decision-making power, no other involved agency can force the preparation of a supplemental EIS. This would extend through the lead agency's filing of its findings statement and issuance of its final decision.

After the lead agency has issued its findings statement and final decision, however, any project modification that was not addressed in the EIS, but which may have significant adverse environmental impacts, may be subject to a supplemental EIS (or a new EIS, if the modification is so substantial as to be essentially a new project). The original lead agency may continue in its role if it will have regulatory jurisdiction over the modification, or, another involved agency that must approve the modification may be established as lead. Any such reestablishment of lead agency requires the concurrence of all involved agencies.

In the case of a generic EIS, the involved agencies may agree in advance that a second involved agency will conduct a site-specific SEQR analysis once the original lead agency has made its initial decision based on its generic EIS findings.

8. How should an agency proceed if it concludes that a final EIS must be supplemented?

The SEQR regulations require that a supplemental EIS be subject to the full procedural requirements for any other EIS, except for mandatory scoping. Thus, when a supplemental EIS is required after a draft or final EIS, the following steps apply:

- The lead agency should document its assessment of the impacts that are the basis for requiring the supplemental EIS, preferably using a full EAF;

- The lead agency must prepare and file a notice of intent to prepare a supplemental EIS, that is, a positive declaration;
- The lead agency may choose to conduct scoping (which remains optional for supplemental EISs);
- The lead agency must prepare or review the draft supplemental EIS to determine whether the document is adequate for public review;
- Once the draft supplemental EIS is accepted, the lead agency must notice and conduct a public review period;
- The lead agency may choose to conduct a hearing on the supplement;
- The lead agency must respond to comments, prepare a final supplemental EIS including comments plus responses, and file notice of the completion of the document; and
- The lead agency and all other involved agencies must then make their findings.

9. Who is responsible for preparing a supplemental EIS?

For projects involving applications for governmental approvals, supplemental EISs are typically prepared by the project sponsor. However, as with all EISs, a supplemental EIS must be reviewed and accepted by the lead agency, and the content of a final supplemental EIS remains the responsibility of the lead agency.

Exhibit F

Southampton Town Zoning Board of Appeals Decision # D018150

Accessory Use Interpretation in the matter of Lewis Road PRD

November 15, 2018



Town of Southamptton

Board of Appeals

This is Not a Building Permit

DECISION NO. D018150

DECISION DATE: November 15, 2018

BOARD FINDINGS

OWNER: DLV Quogue Owner, LLC
Discovery Land Company
14605 N 73rd St
Scottsdale AZ 85260

LOCATION: 74 Spinney Rd, East Quogue

DETERMINATION:

In conclusion, this Board finds that the proposed 18-hole, 91 acre, private golf course, available only to the owners of the subdivision parcels and not to the public-at-large, together with the following maintenance and operating buildings and structures that accompany said golf course (as long as they do not exceed the following square footage): (i) a 4,500 square foot one story main floor with full basement Maintenance Facility; (ii) a 500 square foot single story/no basement Irrigation Well Barn; and (iv) two 500 square foot single story/no basement Comfort Stations located on the golf course; are accessory to the 118-home residential subdivision located on 591 acres.

Pursuant to application, and survey and conditions as approved by the Board of Appeals.

NOTE: The holder of this variance is requested to familiarize himself with the ordinance under which said variance is granted. Any violation of the provisions of said ordinance shall render the offender liable for the penalties provided therein, and in addition thereto, may result in the immediate revocation of the building permit.

This notice must be kept on the premises until full completion of the work authorized

PER

Adam B. Grossman
Chairman

**ZONING BOARD OF APPEALS
TOWN OF SOUTHAMPTON**

-----X
**In the Matter of Lewis Road PRD
("The Hills")
Lewis Road, Spinney Road
East Quogue, New York
SCTM # 900-25-3-1-, et. al
(assemblage of 178 parcels)**
-----X

INTERPRETATION

FINDINGS AND DETERMINATION

Based upon the application, documents contained in the Board's file, and testimony presented at the July 19, 2018, and September 6, 2018, public hearings, the Zoning Board of Appeals finds and determines as follows:

The Subject Premises.

The overall project area consists of a total of 178 lots located to the north and east of Lewis Road and extending to and north of Sunrise Highway, totaling approximately 591 acres in the hamlet of East Quogue (the "premises") and is owned by DLV Quogue, LLC, and its affiliates. The premises is located in the CR-200 Zoning District and is within the Town's Aquifer Protection Overlay District. Further, some of the parcels on the south side of Sunrise Highway are located within the Central Pine Barrens Core Preservation Area with the majority of the rest located within the Central Pine Barrens Compatible Growth Area. In 2017, a Town Board resolution to approve a Mixed Use Planned Development District ("PDD") for the premises failed to pass. Subsequently, the property owner filed a Pre-Application with the Southampton Town Planning Board ("Planning Board") to develop the premises, which included a standard yield subdivision, as well as two alternative Planned Residential Development or cluster plans ("PRD") that is: (i) a 137-unit PRD plan with residential accessory uses for the owners of the lots only; and (ii) a 118-unit PRD plan with residential accessory uses including an 18-hole golf course for the owners of the lots only. For purposes of this Board's review, and based upon the referrals discussed below, the 118-unit PRD plan with residential accessory uses including an 18-hole golf course will be considered.

Issue

By Memorandum dated May 29, 2018, and Resolution No. 159 of 2018, adopted May 24, 2018, the Southampton Town Planning Board referred to the Chief Building Inspector the following question:

Is applicant's proposed 18-hole golf course, available only to the owners of the subdivision parcels and not to the public-at-large, customary and accessory to the 118-home residential subdivision located on 591 acres, or

does said golf course – together with the maintenance and operating buildings and structures that accompany said golf course – constitute a second principal use?

The Chief Building Inspector, Michael Benincasa, recused himself from all involvement and participation in the matter of the Lewis Road PRD by Memorandum to the Town Planning & Development Administrator, dated May 30, 2018. By Memorandum dated May 30, 2018, and pursuant to Town Code §330-165C, Senior Building Inspector Dennis O'Rourke forwarded the issue to this Board for its determination.

SEQRA

Pursuant to 6 NYCRR Part §§617.5(c)(7) and (31) of the State Environmental Quality Review Act ("SEQRA"), and the relevant provisions of the Southampton Town Code, the review of a determination is a Type II action.

Public Hearings and the Record.

The following testimony and evidence was submitted at the public hearings and into the record regarding the issue before the Zoning Board of Appeals:

Wayne Bruyn, Esq., of O'Shea, Marcincuk, & Bruyn, LLP, appeared on behalf of the property owner stating that they are currently before the Planning Board with a pre-application for a project totaling 591 acres. Mr. Bruyn stated that the Planning Board is considering a standard yield plan and two PRD plans depicting different layouts and designs – all of which will be determined by the Planning Board. Mr. Bruyn explained that should the Planning Board desire to permit the subdivision to proceed as a PRD, the provisions of Chapter 247 apply, which requires that 65% of the premises be preserved as open space. In addition, and separate from this open space (390 acres), Mr. Bruyn explained that an 18-hole golf course is proposed, which together with the 118-residential units, comprises the remaining 35% of the premises. Mr. Bruyn explained that the 118-unit plan would be developed as a "cluster" plan, and that in addition to the open space requirement, the premises is also subject to limitations since it is located within the Aquifer Protection Overlay District and the Pine Barrens.

Mr. Bruyn noted that a residential development and public member golf course was initially proposed for the premises through a PDD before the Town Board, but was not approved by a supermajority of the members. As such, Mr. Bruyn explained that the development of the premises was modified, the membership of the golf course restricted to a private recreational amenity open only to and used solely by the owners of the units in the residential subdivision and their private non-paying guests – and the plan presented to the Planning Board. Mr. Bruyn noted that the premises is before the Zoning Board now simply because the Planning Board asked for a determination as to whether the 18-hole golf course is customary and accessory to the proposed 118-home subdivision or alternatively, constitutes a second principal use.

Mr. Bruyn asserted that the Southampton Town Code does not list a golf course as a primary use, nor does that preclude its consideration as an accessory use. Citing to the Town Code, Mr. Bruyn stated that the provisions expressly allow accessory uses and structures that are customarily incidental to the principal use, except those prohibited. Mr. Bruyn asserted that the only analysis that needs to be made is whether the proposed private golf course use meets the definition of “accessory use” – that is, customarily incidental and subordinate to the principal use of a large scale residential subdivision. Mr. Bruyn maintained that “if the Town Board had intended to prohibit a golf course as a customary accessory use to a large residential subdivision, it would have said so in the Zoning Law.”¹ In response to questions from the Board, Mr. Bruyn explained that, absent a specific prohibition, any use could be considered by the Board to be an “accessory use,” and that a fact finding analysis would have to be made to consider whether the use was subordinate, incidental, and customary to the principal use.

Mr. Bruyn reminded the Board that the Town routinely approves accessory structures and uses, which include tennis courts, swimming pools, decks, basketball courts, a carousel house, croquet courts, marinas, and spas, many of which are not listed in the Table of Use Regulations or defined in the Town Code—and referred to the ZBA Decisions of *In the Matter of the Sagaponack Home Owners Association et. al*² and *In the Matter of Wendy Lehman*,³ where this Board approved accessory structures, including a playhouse, garden and beach pavilion, mechanical building, and artist studio. Mr. Bruyn also submitted information, including surveys and aerial photographs of various single family homes within the Town of Southampton that boast golf holes and/or courses. Also submitted by the property owner was a table comparing the average size of approved structures and uses in the Town to lend a sense of scale as it relates to the proposed golf course—revealing that the Lewis Road PRD proposed accessory structures and golf course cover less than 18% of the property, as opposed to the approximate 20% permitted by the Town on a one-acre lot.⁴

Mr. Bruyn reminded the Board that they must reject any speculation that the golf course is designed for use other than as a private recreational amenity available only to and used solely by the owners of the units in the residential subdivision and their private non-paying guests. Mr. Bruyn explained that this use restriction will be achieved by deed restrictions and covenants for the residential units stating that the golf course will be for the exclusive use of the homeowners and not open to the public for membership as had been previously proposed before the Town Board.

Likewise, Mr. Bruyn reminded the Board that it can look beyond the Town of Southampton and review national data to determine whether this golf course can be considered customarily incidental and subordinate to the principal use of the residential

¹ See September 27, 2018, Reply Memorandum from Wayne Bruyn, Esq. at page 8.

² See *In the Matter of the Application of the Sagaponack Home Owners Association, Alan Stillman, Joseph Binder, Jay Chiat, Howard B. Graham, Joseph Dillworth, Joseph Zimmerman and Albert Bialek*, Decision No. D102080, dated January 7, 1999 (hereinafter, “*The Matter of Renner*”).

³ See *In the Matter of Wendy Lehman*, Decision No. D012650, dated January 1, 2010.

⁴ See Review of the Town of Southampton practices in approving accessory uses that are not listed in the Residential Table of use Regulations” dated August 2018, updated with clearer images September 2018.

subdivision. Mr. Bruyn noted that this type of analysis was done with convenience stores in the *Exxon*⁵ case, and reminded the Board that it has followed this rationale when considering convenience stores and gas stations throughout the Town. “What is customary is determined on a wider level in which evidence of nationwide patterns is not only appropriate, but has been accepted by reviewing courts.”⁶ Mr. Bruyn maintained that the Board cannot ignore the overwhelming evidence presented of golf courses as accessory to large scale subdivisions/residential developments on Long Island, in New York, and across the nation.

Mr. Bruyn also submitted that here in the Town, golf and golf facilities have been permitted on residential properties as customary accessory uses without regulation; pointing to (i) a 9-hole golf course on the Cow Neck five-lot subdivision; (ii) the “Three Ponds Farm” 9-hole golf course on the Gordon property; and (iii) golf holes and greens on various other residential properties. Mr. Bruyn also explained to the Board that the Town permitted Golf at the Bridge as a QPSUD which is a subdivision built around an 18-hole golf course and that there, the golf course is not limited to the unit owners—while here, it would be exclusively for the unit owners.

Mr. Bruyn submitted concept plans and descriptions of the project which included other recreational and community facilities, and presented the following structures/buildings proposed to be used in connection with the golf course: (i) an HOA Property Maintenance Facility -- single story building with a 4,500 square foot footprint and a basement of the same size for maintenance work and equipment storage (totaling 9,000 square feet); (ii) a 500 square foot single story/no basement Irrigation Pump House; (iii) a 300 square foot single story/no basement Irrigation Well Barn; and (iv) two 500 square foot one story comfort stations.⁷ Lastly, Mr. Bruyn reminded the Board that the property owner did not make any application to the ZBA and that the development of the premises will not require any variances from the Board.

Steven Barshov, Esq., of Sive, Paget, & Riesel, PC, also appeared on behalf of the property owner, stating that golf courses are customary accessory uses both locally and across the country, likening them to tennis courts, pools, and other recreational amenities. Mr. Barshov further asserted that when the courts have analyzed these issues, notwithstanding local regulations, the analysis must be made regarding whether a use is considered accessory to a principal use. Mr. Barshov asserted that the proposed golf course here, is clearly subordinate and incidental in terms of its size in relation to the entire premises (approximately 16%) and intensity, since the membership will be limited to those unit owners and guests. Mr. Barshov maintained that the golf course as a principal use would propose significantly more members than the limitation presented here. Mr. Barshov echoed the argument asserted by Mr. Bruyn, that the Town Code gives examples of

⁵ See *Exxon Corp. v. Board of Standards & Appeals*, 128 A.D. 2d 289, at 293, 515 N.Y.S. 2d 768 (1st Dept. 1987), *re-aff'd* 151 A.D. 2d 438, 542 N.Y.S. 2d 639 (1st Dep’t. 1989).

⁶ See Reply Memorandum of Law of DLV Quogue, LLC, prepared by Wayne Bruyn, Esq., dated September 27, 2018.

⁷ See Exhibit C to Supplemental Memorandum of Law of DLV Quogue, LLC, prepared by Wayne Bruyn, Esq., dated August 24, 2018.

accessory uses, but that it is only illustrative and not comprehensive, nor does it prohibit a golf course.

Charles Voorhis, of Nelson, Pope, & Voorhis, LLC, an environmental planning consultant, testified and submitted a report dated July 19, 2018, summarizing examples of residential subdivisions built around golf courses, as well many examples of residences with golf holes within the Town. This report noted that Wikipedia offers a definition for a “golf course community,” as a “type of residential housing development built around a golf course” and attached a list of nearly 500 golf course communities in the United States as well as examples of “golf recreational amenities” on residential properties in the Towns of Southampton, Brookhaven, and Huntington.⁸

David Celi and Brian Babcock testified in support of the interpretation, stating that that proposal would be a benefit to the neighborhood. Larry Oxman, a certified real estate broker, testified that he has seen many golf holes on residential properties not only within the Town, but also the county, the state, and nationally. Jessica Insalaco testified in support of the interpretation stating that the golf course’s purpose is accessory since it is only open to the owners of the subdivision parcels, and that it is consistent with the character of a resort town, where there are pools, tennis courts, and decks. Edward Wolfersdorf testified that he used to be a Building Inspector for the Town and that he noticed many private greens and small golf courses on residential lots within the Town that are not, and should not, be regulated.

Carolyn Zenk, Esq., appeared on behalf of the Citizens for Clean Drinking Water, Clean Air, and Clean Bays, and submitted letters in opposition to the project and interpretation, stating that that project is unlawful since the proposed uses are prohibited—citing as authority for this, the Town’s Open Space Law, “Cluster Law” and Chapter 247. Specifically, Ms. Zenk asserted that the proposed golf course is a prohibited use because Town Code §247-9(D) does not allow open space areas to be used for active recreation. Ms. Zenk maintained that the Planning Board has never allowed a golf course use in the five-acre residential zone as a primary or accessory use since she did not receive any responsive documents to a FOIL request for all “golf course approvals in Southampton Town’s five-acre residential zone.”

Ms. Zenk cited Town Code §330-10A (3) to assert that the “clubhouse” containing ten dwelling units (“ten-plex”) is illegal and can’t be considered an accessory building. As such, Ms. Zenk maintained that the golf course and the ten-plex are not customary and are not to be “expected” in the zoning district. Ms. Zenk asserted that the five-acre zoning is the most restrictive in the Town in order to preserve the pine barrens, forests, woodlands, wetlands, and farmland and that the matter should be denied. Ms. Zenk stated that this zone is critical to the health of the residents because it will affect the quality of drinking water for all time, and that this project will destroy the zoning district, open space, and aquifer regulations.

⁸ Professional Planning Research, Analysis and Expert Opinion, dated July 19, 2018, prepared by Nelson, Pope & Voorhis, LLC.

Ms. Zenk further maintained that the proposed golf course and ten-plex are not incidental or subordinate and that they are not proposed on the same lot but instead, are on the common area or the open space area itself. Ms. Zenk informed the Board that the only way to have the golf course, is through a change of zone—which was already considered and rejected by the Town Board. Ms. Zenk also maintained that the issue before the Board is actually “1) [w]hether a 91 acre golf course is an ‘accessory use’ to the five acre *residential* housing zone? and 2) [w]hether a ten plex multiple dwelling or ‘clubhouse area’ of 4.3 acres is an ‘accessory structure’ to a single family home in the five acre *residential* zone?”⁹

Ms. Zenk explained to the Board that both a private and public golf course are listed in the SIC Code as a commercial use and are prohibited in the CR-200 Zoning District, making it impossible for such a use to be accessory to a residential subdivision. Ms. Zenk noted that miniature golf is only permitted by Special Exception in the Highway Business and Motel Business Zones. Ms. Zenk maintained that allowing a golf course as an accessory use would be precedent setting and would endanger the drinking water, marine ecosystems, and likely contaminate the aquifer.

Bob DeLuca, and Aaron Virgin of the Group for the East End, Richard Amper, on behalf of the Long Island Pine Barrens Society, and Lisa Liquori, former Planning Director for the Town of East Hampton, testified in opposition to the interpretation, noting, in sum and substance, that: (i) a golf course is a prohibited use in a PRD; (ii) the Board should not be persuaded by what is permitted in other communities, and should focus only on the Southampton Town Code; (iii) the construction of a golf course here would have a negative impact on the aquifer; (iv) all uses that are not listed in the Town Code are prohibited; (v) the Town Code specifically lists those accessory uses that are permitted, including churches and parks; (vi) the only way to have a golf course on the premises is by way of a PDD, which has been rejected by the Southampton Town Board; and (vii) the golf course is a second principal use in terms of its size and scale.

Andrea Spilka, President of the Southampton Civic Coalition, testified in opposition to the interpretation, stating that a golf course is a principal use, an intense use, and one that is contrary to the intent of the Town’s Open Space law. Ms. Spilka also testified that there would be no end to the list of accessory uses that could be proposed, including a petting zoo or a drag strip. William Kearns testified that the proposed golf course is a principal commercial use and should not be allowed in the Pine Barrens. Frederick Havemeyer also testified that the proposed golf course is a principal use, particularly in terms of size and scale—with the magnitude of the National, Shinnecock and Sebonac golf courses. Tom Jack, Bob Tyson, and George Lynch testified in opposition to the interpretation that the golf courses are not customary as accessory uses in the Town of Southampton. Elizabeth Jackson, co-chairperson of the East Quogue CAC, testified with concerns about the interpretation and the project, and stated that the proposal exceeds the allowable disturbance in the Aquifer Protection Overlay District. Michael Mirino

⁹ See Letter from Carolyn Zenk, Esq., “Testimony and Rebuttal of Carolyn Zenk, Attorney at Law,” at the September 6, 2018, hearing on Lewis Road Planned Residential Development aka the “Hills at Southampton” received September 20, 2018.

testified in opposition to the interpretation, stating that the Board should "put this thing to bed."

Richard Handler, Esq., of counsel to Jeff Bragman, Esq., stated that the size and scope of the entire project is excessive in this environmentally sensitive area. Mr. Handler explained that local zoning regulations govern whether a use or structure is permitted, and that these provisions cannot be ignored when citing to golf courses located elsewhere in the nation, or even the state. Mr. Handler also asserted that the presence of golf holes/greens on other properties within the Town does not mean that they are permitted, nor is it binding on the Town.

This Board is in receipt of a letter from Richard Amper, Esq., Executive Director of the Long Island Pine Barrens Society, and Robert DeLuca, President of the Group for the East End in opposition to the application. These letters maintained, in sum and substance, that: (i) the ZBA has no authority to review the issue as the Town Board has already denied this project as a PDD; (ii) the Business District Table of Use Regulations in the Town Code prohibits public golf courses and private golf courses in all of the business zones, and allows only miniature golf in two of the eight business zones by special exception approval; and (iii) there are only 15 uses that are listed in the Accessory Use subheading in the Town's Residence District Table—and golf course/club is not one of them.

This Board is in receipt of correspondence from the following individuals in opposition to this application: Andrea Spilka, President, Southampton Town Civic Coalition, Jeffrey L. Bragman, Esq., on behalf of the Group for the East End, Inc., Paul C. Dietche, Elizabeth Jackson, Leslie Lowery, Mike Anthony, Fred Immermann, Anthony Hitchcock, Judith Faer, Linda Sclafani, Ursula Kalish, Susan Harrison, Katherine McCoy, Nicholas Howey, Brolin Edson, Joanne Gouge, Thomas Babcock, Greg Holbrook, Randall Culpepper, Maureen Sherry, Donald Denis, Sarah Mendenhall, Jennifer Burns, Stephen Linnick, Alex Bills, Vanessa Parsons, Lynn Cisek, Deborah Ferguson, Dara Mullen, Jayne Clare, Jane Iselin, Eileen Schwinn, Julie Burmeister, Ronald Nappi, Michael Mirino, Michael Alestra, Joseph Caracciolo, Ora Salmaggi, Victoria Greenbaum, William Kearns, Ron Nappi, Kerri Deuel, Marianne Klepacki, Geri Besca, Irene Tully, Michael Higgiston, Nestor Gounaris, Anthony Gounaris, Nickole Berry, Louise Smith, Pamela Topham, Jeffrey Vogel, Ed Slutzky, Valerie Harte, Niki Silverstein, Anne Rachel, Diana Lindley, Samantha Honig, John and Candice Frawley, Tina Kaminow, Mary Lynch, Anne Cassels, Nancy Cory, Richard Kane, Peter Wilson, Elke Santagata, Kathleen King, Rita Nolan, Michael Longacre, Jayne Young, John Klonowski, Hope Marx, Andrew Blake, JoAnna Winer, Jenny and Patrick Hornberger, Gretchen Comly, Dawn Frost, Michael Tekel, Jane Gorman, Eileen Ames, Joan Hughes, Keith Serafy, Beverly Dixon, Lisa McMahon, Carla Rich, Patricia Downey, Nicki Diner, Julie Penny, Stuart Goode, Georgianna Lynn, Larry Penny, Nancy Heaney, Elizabeth Maher, Annie Falk, Paula Eland, Anne Cassels, Alessandro Scarsini, Thomas Geismar, Michael Desario, Richard Ferrara, Laurie Corey, Zoe DiMele, Rolf Heitmeyer, Catherine Cotterall Apotheker, Rhonda Brown, and Miriam O'Malley. These letters state in sum and substance, that: (i) Town Code Section 247 does not permit a golf course; (ii) the Comprehensive Plan does not permit a golf course; (iii)

the Town Code does not permit a private golf course in a five-acre residential zone or in a PRD; (iv) the golf course is a second primary use; and (v) the development is disastrous for the environment.

Finally, this Board is in receipt of correspondence from the following individuals in support of this application: Heather, David and Deborah Girgenti; Jessica Insalaco, Brian Tymann, Bruce Tria, Lisa Tymann, Jeffrey DiLandro, Karen Kooi, Maria Daddino, Marcus Stinchi, Patrick Gorman, Janice Landis, Shane Smith, Moira Sarigul, Kimberly Quarty, Cathy Selliger, Dan Manning, Donna Lanzetta, Larry Hoffman, David Celi and Camden Ackerman: who state, in sum and substance that: (i) the golf course is subordinate—similar to a tennis court or a sports court; and (ii) the golf course has no separate purpose since it is only available to the owners of the subdivision properties and their guests. Any other testimony or correspondence received, whether or not summarized above, are maintained as part of the file, and have been reviewed and considered as part of this Determination.

DISCUSSION

At the outset this Board notes, as it did in the *Matter Rennert*, that this matter has provoked strong emotions throughout the Town, particularly as the development of the premises, in different iterations, has been presented to the Town Board, the Planning Board, and now the ZBA. Also like the *Rennert* matter, this Board is further cognizant of the unprecedented public interest – and controversy surrounding these issues, and is sensitive to the opinions voiced both in support and in opposition to the matter. However, the denial of a land use permit based solely upon community opposition¹⁰ or speculation is impermissible.¹¹ And this Board is ever mindful that zoning ordinances, which are in derogation of common law, must be strictly construed against the zoning authority.¹²

This Board also is aware of the frustration expressed at the public hearings by the public that the plan presented was a “Concept Plan” and that the design and layout were preliminary and subject to change. To the extent that further details were relevant to our analysis (specifically, the maximum size of any structures associated with the proposed golf course and the acreage allotted to the golf course and the development), this Board sought clarification. However, it also is important to note that no variances or waivers have been requested from this Board as they relate to setbacks, clearing regulations, or

¹⁰ See *DAG Laundry Corp. v. Bd. of Zoning Appeals of North Hempstead*, 98 A.D.3d 740, 950 N.Y.S.2d 389 (2d Dep’t. 2012). See also *Matter of Twin County Recycling Corp. v. Yevoli*, 90 N.Y. 2d 1000 (1997); *Metro Enviro Transfer, LLC v. Vil. of Croton-on-Hudson*, 5 N.Y.3d 236 (2005).

¹¹ See *Matter of Association of Friends of Sagaponack et al., v. Zoning Board of Appeals of the Town of Southampton*, 731 N.Y.S.2d 851, 731 N.Y.S.2d 851 (2d Dep’t. 2001); *Di Milla v. Bennett*, 149 A.D.2d 592, 540 N.Y.S.2d 274 (1989), *lv. denied*, 74 N.Y.2d 610, 546 N.Y.S.2d 554 (1989); *Matter of Kam Hampton I Realty Corp. v. Board of Zoning Appeals Vil. of E. Hampton*, 273 A.D.2d 385, 709 N.Y.S.2d 613 (2d Dep’t. 2000).

¹² See *Thompson Indus., Inc., Incorporated Vil. of Port Washington N.*, 27 N.Y.2d 537, 539, 313 N.Y.S.2d 117, (1970); *Matter of 440 East 102nd St. Corp. v. Murdock*, 285 N.Y. 298, 304, 285 N.Y. 298, 304 (1941). *Exxon Corp. v. Board of Standards & Appeals*, 128 A.D.2d 289, 293, 515 N.Y.S.2d 768 (1st Dept. 1987), *re-aff’d* 151 A.D.2d 438, 542 N.Y.S.2d 639 (1st Dept. 1989); *Matter of C. De Masco Scrap Iron & Metal Corp. v. Zirk*, 62 A.D.2d 92, 98, 405 N.Y.S.2d 260, *aff’d*, 46 N.Y.2d 864, 414 N.Y.S.2d 516 (2d Dep’t. 1978).

otherwise,¹³ and, to that end, this Board does not have the authority to vary any provision of Chapter 292 (Subdivision Regulations) or Chapter 247 (Open Space) of the Town Code. As such, the ultimate layout, design, and development of the premises will be determined by the Planning Board, as will conformity with the applicable provisions within their purview. This Board is only authorized to review the issues as they pertain to Chapter 330 (Zoning) and any relevant case law in order to render a determination on the narrow issue before us.¹⁴

Jurisdiction

Despite assertions to the contrary, it is one of the primary functions of the Zoning Board of Appeals to interpret the provisions of Chapter 330 (Zoning) of the Southampton Town Code. The Board's authority to decide appeals and review determinations is specifically provided for by New York State Town Law §267-a (Board of Appeals Procedure) which states at §267-a (5) (Hearing Appeals):

Unless otherwise provided by local law or ordinance, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the town.

Likewise, Town Code §330-165(C) provides, in relevant part, that the Board of Appeals, shall, upon appeal, hear and decide "[a]ny matter which the Building Inspector appeals on grounds of doubt as to the meaning or intent of any provision of this chapter." Accordingly, it was entirely appropriate for the Building Department to forward this issue to the ZBA, and this Board may properly review the matter.

Standard of Review/Collateral Estoppel

This Board also rejects the assertion that deference must be given to the Town Board's determination as it relates to the proposal to re-zone the premises to a Planned Development District which included, among other things, a membership golf course.¹⁵ Here, the ZBA has before it a question of first impression as to what is proposed in this instance, to wit, a private golf course, open only to and used solely by the owners of the units in the residential subdivision and their private non-paying guests. Since the Town Board considered a membership golf course open to the public rather than a private golf course, there is no basis for the application of collateral estoppel to the issue before the ZBA.

¹³ The Planning Board Pre-Application Report notes at page 13 that the premises is located in the Aquifer Protection Overlay District which limits the amount of clearing and disturbance permitted.

¹⁴ See Marx v. ZBA of the Village of Mill Neck, 137 A.D.2d 333, 529 N.Y.S.2d 330 (2d Dept. 1988).

¹⁵ See Memorandum of Law of Group for the East End, Inc. by Jeffrey L. Bragman, P.C., dated September 5, 2018.

In any event, New York State Town Law §267-b (1) provides:

The Board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its option ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.

Thus, the standard set forth for review promulgated in New York State Town Law is the one that this Board will apply herein—that is, *de novo*.¹⁶

Town Code §330-10 (Table of Use Regulations) and Town Code §330-5

While this Board has yet to opine as to whether a private golf course open only to, and used solely by, the owners of the units in the residential subdivision and their private non-paying guests is an “accessory use, building or structure” to a residential development, we have routinely considered whether other proposed uses, buildings or structures are accessory to a principal use. Typically, this review comes to the ZBA as an appeal from the denial of a building permit by the Building Department, where a proposed structure is large (in terms of square footage), or considered “too large,” in comparison to the size of the principal structure. Other times, this Board has determined whether a proposed use is considered accessory, as with convenience stores to gasoline stations.¹⁷ In both of these instances however, and even when this Board is considering granting variances for uses, buildings, or structures that have already been determined to be “accessory” by the Building Department, the Zoning Board has not once rejected or declined to consider a proposed “accessory use, building, or structure” (as that term is defined in Town Code §330-5) because of its absence on the Table of Use Regulations-Town Code §330-10.

In fact, this Board has found a variety of uses, buildings, and structures that are not specifically listed with the Southampton Town Code as “accessory,” including an artist studio, sports barn, accessory structure with loggia, and accessory spa suites. Specifically, in *Rennert*, an appeal was made to this Board to determine whether the following were accessory structures as they related to a proposed 60,000 square foot dwelling: (i) a playhouse (which included a squash court, bowling alleys, and billiard room); (ii) a garden pavilion used as a conservatory to display plants and flowers; (iii) a beach pavilion with

¹⁶ See *In the Matter of Sandland*, Decision No. D013054, dated June 21, 2012. See also *In the Matter of the Application of Little Fresh Pond Association*, Decision No. D012997, dated March 15, 2012. See also JEAN E. MAESS, J.D., ET AL., N.Y. JUR., 2D, BUILDINGS §359, p. 523 (2007) See also *Toys “R” Us v. Silva*, 89 N.Y.2d 411, 423, 654 N.Y.S.2d 100, 107(1996) (In reaching its determination, the Board of Standards and Appeals had *de novo* power and was not bound by the findings of the Department of Buildings).

¹⁷ See *The Matter of Rennert*. *supra* at page 3.

changing room and bathroom facilities; and (iv) a mechanical building that contained heating and electrical storage tanks.

In that case, the Board noted that Town Code §330-5 (Definitions Accessory Use, Building or Structure) affirmatively lists a “playhouse” and does not list the other structures proposed. Nonetheless, the Board found them to be:

. . . customarily incidental to the residential use present on the property, and such amenities are not uncommon in a large, country estate of this scale. The size of the parcel, the primary use of the structure as a large, oceanfront, mansion, and the surrounding affluent area all contribute to this Board’s finding in this regard.

This Board also found that “. . . under Town Code §330-10, customary accessory structures and/or uses are permitted in all residential districts, unless they are expressly prohibited under Chapter 330.”¹⁸ Similarly, after a fact-finding analysis, this Board has consistently held that a convenience store use is customarily accessory to a gasoline station, even though the Table of Use Regulations prohibits convenience stores in Highway Business Zoning Districts, where most gas stations are located.¹⁹ Additionally, this Board has considered variances for other uses, buildings, or structures, that had been determined to be “accessory” by the Building Department but did not comply with Town Code dimensional or placement regulations and were not specifically listed in the Town Code including: a pergola, a bocce/volleyball court, a gazebo, an outdoor shower, outdoor kitchen/barbeques, recreational buildings, guest houses, a petanque court, and beach houses.

Were this Board to limit accessory uses, buildings, and structures to those specifically listed in the Town Code, it would ignore the plain language of: (i) Town Code §330-5, which defines “Accessory, Use, Building, or Structure”, and (ii) Town Code §330-10F(2) which permits “[c]ustomary accessory structures and/or uses, except those prohibited by this Chapter” in the Residence Districts Table of Use Regulations under “Accessory uses.” Those accessory structures and/or uses prohibited by “this Chapter” are specifically listed in the Table of Use Regulations in §330-10(F) and are marked by an “X” in the applicable zoning district. Conversely, those that are permitted are either specifically enumerated (and likely defined in Town Code §330-5) and marked with a “P” for the applicable zoning district, or fall under the “customary accessory structures and/or uses”

¹⁸ See *In the Matter of Rennert supra* at page 3. This ZBA Decision was upheld by the Supreme Court and the Second Department, with the Second Department finding “[t]he ZBA’s conclusion that, however elaborate, the accessory structures are not prohibited by the applicable zoning provisions, are ‘customarily incidental to the residential use and . . . are not uncommon in a large, country estate of this scale’ within an ‘affluent area’ was also properly accorded deference by the Supreme Court.” *Ass’n of Friends of Sagaponack v. Zoning Bd. of Appeals*, 287 A.D.2d 620, 622, 731 N.Y.S.2d 851 (2nd Dep’t. 2001).

¹⁹ *In the Matter of F&E Realty*, Decision No. D10915, dated February 21, 2002; *In the Matter of Strong Oil Company, Inc.*, Decision No. 8769, dated April 20, 1990, and Decision No. 8433, dated December 16, 1988; *In the Matter of 810 F. Realty Corp.* Decision No. 10336, dated May 6, 1999; *In the Matter of Bridgehampton Services Station, LLC*, Decision No. D012144, dated May 3, 2007, *In the Matter of F&E Realty, Co.*, Decision No. D016084, dated June 16, 2016.

heading. These Town Code provisions are consistent with the principle that when construing a zoning regulation, "the issue is not whether the use is permissible, but, rather, whether it is prohibited."²⁰ Therefore, this Board firmly rejects the notion that the only accessory uses, buildings, or structures permitted in residential districts located within the Town of Southampton are those listed in the Town Code.

This Board acknowledges that (i) golf courses, as principal uses, are found within the Town either as pre-existing, nonconforming uses, or through a change of zone; and (ii) miniature golf, as a principal use, is considered a business use and is permitted only by special exception in Highway Business and Motel Business Zoning Districts. However, there is nothing in the Table of Use Regulations or elsewhere in the Zoning Code expressly prohibiting a golf course as an accessory use. Similarly, although the premises is located within the Aquifer Protection Overlay and CR-200 Zoning District, there is nothing restricting accessory structures within these districts, as the opposition has asserted, nor has this Board been asked to consider variances from any of these relevant provisions in order to accommodate a golf course.

Consequently, this Board finds it appropriate to follow the same analysis that is conducted routinely as it relates to Southampton Town Code §330-5, which sets forth the definition for an "accessory use, building or structure" as:

A subordinate use, building or structure customarily incidental to and located on the same lot occupied by the main use, building or structure. The term "accessory building" may include a private garage, shed, playhouse, swimming pool and private greenhouse. The term "accessory building" shall not include any building with sleeping and/or cooking facilities or used for sleeping and/or cooking purposes, except for farm employees living on a farm owned or leased by their employer, an accessory apartment or a bed-and-breakfast as defined by this chapter.

This Board must now determine, based upon the facts and evidence presented, if **this** private 18-hole golf course to be used only by the subdivision unit owners and their non-paying guests is "customarily incidental to" and subordinate to this 118-unit subdivision.²¹

²⁰ See Matter of C. De Masco Scrap Iron & Metal Corp. v. Zirk, 62 A.D.2d 92, 98, 405 N.Y.S.2d 260, *aff'd*, 46 N.Y.2d 864, 414 N.Y.S.2d 516 (2d Dept. 1978); Exxon Corp. v. Board of Standards & Appeals ("Exxon") 128 A.D.2d 289, at 293, 515 N.Y.S.2d 768 (1st Dep't. 1987), *re-aff'd* 151 A.D.2d 438, 542 N.Y.S.2d 639 (1st Dep't. 1989).

²¹ See In the Matter of the New York Botanical Garden v. Board of Standards & Appeal of City of New York, 91 N.Y.2d 413, 671 N.Y.S.2d 423 (1998) (finding that "[w]hether a proposed accessory use is clearly incidental to and customarily found in connection with the principal use depends on an analysis of the nature and character of the principal use of the land in question in relation to the accessory use, taking into consideration the overall character of the particular area in question. This analysis is, to a very great extent, fact-based ...").

Subordinate and Incidental and Not a Second Principal Use

As discussed in previous decisions of this Board, although the Town Code does not offer a definition for the terms “subordinate,” or “incidental,” it is well-settled that words should be used in their common meaning if such meaning is suitable to the draftsman’s purpose.²² Thus, we are guided by the common meaning of the words as stated in Webster’s dictionary. With respect to the Code’s use of “subordinate,” Webster defines it to mean “inferior in order, nature, dignity, power, importance, or the like.” Similarly, “incidental” is defined to mean “subordinate to something of greater importance; having a minor role.” Thus, despite the fact that the Town Code does not assign or dictate a numerical value, it does in fact constrain the size of an accessory structure or use by providing that said structure or use is, to summarize, of lesser meaning or value; smaller.

Here, as proposed, the private golf course is part of a PRD, which requires that the residential units be “clustered,” with 65% of the property dedicated for open space. Testimony was provided that the premises totals approximately 591 acres and is to be parceled out (in approximations) as follows: (i) 91 acres assigned to the golf course, (ii) 390 acres to the open space,²³ (iii) 84 acres to the residential units; (iv) 19 acres of roads/drainage areas; and (v) 97 acres for other private recreational amenities. This Board notes that while the size of the premises is a relevant consideration in this analysis as it relates to the magnitude or scale of the accessory use, we must also recognize that the acreage apportioned to the residential units has been reduced in order to maximize the open space area. Nonetheless, the percentage of acres devoted to the golf course in terms of property coverage is 16.55% of the premises and is comparable to a tennis court on a standard acre lot.²⁴ This Board finds that this percentage is clearly subordinate to the remaining acreage reserved for the residential development, which is the principal/primary use of the premises. The residential development units are for sale and must be clustered, as aforementioned, leaving little to no land available for each unit to have its own individual amenities, which is why amenities, including the golf course, are proposed to be offered to all of the homeowners *en masse*. That a golf course has not been proposed as a private amenity in other residential subdivisions where tennis courts and pools have been located, does not make this proposed golf course any less accessory to the principal residential use. This is particularly true where, as here, to date, there has been no subdivision encompassing almost 600 acres within the Town.

In addition to considering the acreage or the size of the golf course, it is also important to the analysis that the use of the proposed golf course is for a “private recreational amenity open only to and used solely by the owners of the units in the residential subdivision and their private non-paying guests.”²⁵ Testimony was presented that the golf course would be operated and maintained by a homeowner’s association –

²² PATRICIA E. SALKIN, NEW YORK ZONING LAW AND PRACTICE §38:04 (4th ed. 2001).

²³ To be clear, this Board is not opining on whether a golf course may be situated on the land reserved to meet the Chapter 247 Open Space requirement, particularly since this is not proposed.

²⁴ See Comparison of scale of accessory use on standard residential lots compared to the Lewis Road PRD Chart prepared by staff at Nelson, Pope & Voorhis, LLC.

²⁵ See Reply Memorandum of Law of DLV Quogue, LLC, prepared by Wayne Bruyn, dated September 27, 2018, at p.8.

with the use being limited to the owners of the homes and their nonpaying guests. Specifically, the golf course would remain private and would not be a membership golf club open to the public at large – rather, deed restrictions/restrictive covenants incorporated into the deeds would bind all homeowners and owners of the property. This Board finds that these restrictions ensure that the golf course use remains less than, and incidental and subordinate to, the residential development, since the membership and the use of the golf course will be controlled and limited to the owners of the subdivision units.

This Board finds that the size and scale of the proposed golf course with its membership restrictions render it subordinate and incidental to the 118-unit subdivision. This Board also finds the following buildings/structures to be subordinate and incidental to the subdivision, as long as they do not exceed the following square footage: (i) a 4,500 square foot one-story main floor with full basement Maintenance Facility; (ii) a 500 square foot single story/no basement Irrigation Pump House; (iii) a 500 square foot single story/no basement Irrigation Well Barn; and (iv) two 500 square foot single story/no basement Comfort Stations located on the golf course. This Board finds that these structures/buildings were identified by the property owner as being necessary and specifically used in connection with the private golf course, and the Board finds that the presence of these structures/buildings will not transform the private golf course from an accessory use to a second principal use. This Board has not been asked by the Building Department to opine upon any other buildings/structures proposed on the premises, including, but not limited to, a clubhouse or ten-plex.

Customarily Incidental

The Board must now determine whether an 18-hole golf course open only to and used solely by the owners of the units in the residential subdivision and their private non-paying guests is “customarily incidental” to a residential subdivision principal use, looking both within the Town of Southampton and also nationally. Focusing within the Town, evidence was provided that on lots boasting a private residence, there is an 18-hole golf course located at 901 Scuttle Hole Road, Bridgehampton, and a 9-hole golf course at 2299 North Sea Road, North Sea, neither of which received any oversight or regulation by the Town. Evidence was also provided showing at least 16 examples of golf-holes/greens with private residences within the Town, again with no oversight or regulation by the Town.²⁶ While it is true that the presence of these golf holes/greens does not infer approval by the Town, this Board recognizes that here in the Town of Southampton, the presence of golf holes/greens accessory to single family dwellings is not an anomaly, particularly when there are no express prohibitions governing their existence.

Likewise, as was held in the Matter of New York Botanical Gardens and the *Exxon* case, the Board may look outside of the Town limits to consider whether golf courses are

²⁶ Evidence was provided showing golf holes/greens on properties within the Town of Southampton located at: 520 Montauk Highway, 117 Whites Lane, 10 Pine Tree Lane, 56 Sunset Avenue, 7 Homans Avenue, 628 Lumber Lane, 5 Wisteria Drive, 11 Whippoorwill Lane, 2 Apaucuck Cove Lane, 76 Rose Hill Road, 281 Daniels Lane, 137 Halsey Lane, 801 Ocean Road, 94 Day Lily Lane, 58 Sunset Avenue and 26 Sunset Avenue.

customary incidental accessory uses elsewhere in the country. The Court of Appeals, In the Matter of New York Botanical Gardens, affirmed the approval of a 480-foot radio tower as an accessory use to a radio station at Fordham University, noting that the Board had evidence before it regarding other college campuses in New York and all over the United States. In *Exxon*, the Appellate Division, First Department, noted that there was evidence before the Board of Standards and Appeals of the City of New York—based upon a New York Times Article -- that: (i) in 1985 over 55,000 gasoline stations in this country combined the sale of gasoline with a convenience store; (ii) there was a trend toward an increase in the combination; and (iii) the sale of such products could be found in close to ½ of all stations selling gasoline. The Court drew the conclusion based upon the article, as well as other written articles, that the “sale of gasoline in connection with convenience store operations is becoming commonplace in this country,” and finding that since “a convenience store is not prohibited as an accessory use by the Zoning Resolution, although it is not expressly authorized,” it should be remanded for consideration of the facts of Exxon’s specific convenience store proposal.²⁷ Upon remand, after the Board, in contravention of the holding, determined that a retail convenience store is **not** an accessory use to an automotive service station, the Court of Appeals annulled the resolution finding that the “evidence demonstrates that the specific use proposed by petitioner is a qualified use in that the type of convenience store intended by Exxon is commonly and customarily found in connection with, and incidental to, the principal use of an automotive service station.”²⁸

This Board consistently follows this rationale when reviewing proposed convenience stores as accessory to gasoline stations, and has approved the construction and expansion of numerous convenience stores within the Town.²⁹ Here, a 10 page report with voluminous attachments submitted by the property owner identified hundreds of golf courses that have been customarily built as part of and/or integrated into large scale residential subdivisions throughout the country for many years, and noted that they are so commonplace, that Wikipedia offers the defined term “Golf Course Community.”³⁰ This Board cannot ignore that golf courses are found elsewhere in the state and the country as an accessory use to residential developments, or that several private residences within the Town of Southampton boast golf holes/greens on their properties. That the subject premises is comprised of 591 acres and is large enough to offer one 18-hole golf course, as well as 84 acres for 118-residential units, and 390 acres of dedicated open space, speaks volumes to the uniqueness of this application as well as the size and scope of this residential development.

²⁷ See In the Matter of the New York Botanical Garden v. Board of Standards & Appeal of City of New York, 91 N.Y.2d at 421; *Exxon supra* at 298.

²⁸ See *Exxon Corp. v. Board of Standards & Appeals*, 151 A.D.2d 438, 542 N.Y.S.2d 639 (1st Dept. 1989)

²⁹ See *In the Matter of F&E Realty*, Decision No. D10915, dated February 21, 2002; *In the Matter of Strong Oil Company, Inc.*, Decision No. 8769, dated April 20, 1990, and Decision No. 8433, dated December 16, 1988; *In the Matter of 810 F. Realty Corp.* Decision No. 10336, dated May 6, 1999; *In the Matter of Bridgehampton Services Station, LLC*, Decision No. D012144, dated May 3, 2007, *In the Matter of F&E Realty, Co.*, Decision No. D016084, dated June 16, 2016.

³⁰ See Professional Planning, Research, Analysis & Expert Opinion, prepared by Nelson, Pope & Voorhis, LLC, dated July 19, 2018.

CONCLUSION

In conclusion, this Board finds that the proposed 18-hole, 91 acre, private golf course, available only to the owners of the subdivision parcels and not to the public-at-large, together with the following maintenance and operating buildings and structures that accompany said golf course (as long as they do not exceed the following square footage): (i) a 4,500 square foot one story main floor with full basement Maintenance Facility; (ii) a 500 square foot single story/no basement Irrigation Pump House; (iii) a 500 square foot single story/no basement Irrigation Well Barn; and (iv) two 500 square foot single story/no basement Comfort Stations located on the golf course; are accessory to the 118-home residential subdivision located on 591 acres.

Dated: November 15, 2018



Exhibit G

Southampton Town Zoning Code §330-10, Residence Districts

Table of Use Regulations

(Last Amended, 1-26-2021, L.L. No. 3-2021)

ZONING

330 Attachment 1

Town of Southampton § 330-10, Residence Districts Table of Use Regulations [Last amended 1-26-2021 by L.L. No. 3-2021]

P = Permitted use
SE = Special exception use
X = Prohibited use

ALL UNLISTED USES ARE PROHIBITED IN ALL DISTRICTS

Use Classification	CR-200 Country Residence	CR-120 Country Residence	CR-80 Country Residence	CR-60 Country Residence	CR-40 Country Residence	R-120 Residence	R-80 Residence	R-60 Residence	R-40 Residence	R-20 Residence	R-15 Residence	R-10 Residence	MF-44 Multi- family Residence	MHS-40 Mobile Home Subdi- vision Residence	SC-44 Senior Citizen Housing	MFPRD	OSC
A. Residential uses.																	
(1) 1-family detached dwelling, new	P	P	P	P	P	P	P	P	P	P	P	P	P	P	X	P	X
(2) 2-family detached dwelling, new.	X	X	X	X	X	X	X	X	X	X	X	X	P	X	X	P	X
(3) Multiple dwelling for 3 or more families	X	X	X	X	X	X	X	X	X	X	X	X	P	X	X	P	X
(4) Conversion of existing single- family dwelling for 2 families.	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	X	X	P	X	X	X	X
(5) Dwelling lawfully existing prior to adoption of this chapter.	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	X
(6) Planned residential development	P	P	P	P	P	P	P	P	P	P	X	X	X	X	X	X	X
(7) Camping ground	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	X	X	X	X	X
(8) Mobile home	X	X	X	X	X	X	X	X	X	X	X	X	X	P	X	X	X
(9) Senior citizen housing.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	P	P	X
(10) Conversion into residential condominium or residential cooperative.	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE
(11) Density incentive.	X	X	P	P	P	P	P	P	P	P	X	X	X	X	X	X	X
(12) Recreational vehicle parks.	X	X	X	X	X	X	X	X	SE	SE	SE	SE	X	X	X	X	X
B. Residential community facilities.																	
(1) Church or similar place of worship or religious instruction, parish house rectory, seminary or convent.	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	X	X	X

SOUTHAMPTON CODE

Use Classification	CR-200 Country Residence	CR-120 Country Residence	CR-80 Country Residence	CR-60 Country Residence	CR-40 Country Residence	R-120 Residence	R-80 Residence	R-60 Residence	R-40 Residence	R-20 Residence	R-15 Residence	R-10 Residence	MF-44 Multi- family Residence	MHS-40 Mobile Home Subdi- vision Residence	SC-44 Senior Citizen Housing	MFPRD	OSC
(2) (Reserved)	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	X	X	X
(3) Nursery school or child day care.	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
(4) Park, playground or recreational area when authorized or operated by the municipality.																	
(5) Public library or museum.	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	X	X	X
(6) Fire station, municipal office or any government building of similar character.	P	P	P	P	P	P	P	P	P	P	P	P	P	X	X	X	X
(7) School, elementary or high, public, denominational or private, operated or licensed by the New York State Education Department.	P	P	P	P	P	P	P	P	P	P	P	P	P	X	X	X	X
(8) School for the mentally retarded, public or private, nonprofit for which a certificate of incorporation has been issued under Article 31 of the Mental Hygiene Law of the State of New York.	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	X	X
(9) Colleges and universities.	X	X	X	X	X	SE	SE	SE	SE	SE	SE	SE	X	X	X	X	X
C. General community facilities.																	
(1) Beach club, nonprofit.	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	X	X	X	X	X
(2) Bus passenger shelter.	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE
(3) Cemetery.	SE	SE	SE	SE	SE	X	X	X	X	X	X	X	X	X	X	X	X
(a) Expansion of preexisting nonconforming cemetery.	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	X	X	X	X	X
(4) Helicopter landing area.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(5) (Reserved)																	
(6) (Reserved)																	
(7) (Reserved)																	
(8) Nursing home or proprietary rest home.	SE	SE	SE	SE	SE	X	X	X	X	X	X	X	X	X	SE	X	X
(9) Philanthropic, fraternal, social or educational institutional office or meeting room, nonprofit.	SE	SE	SE	SE	SE	X	X	X	X	X	X	X	X	X	SE	X	X

ZONING

Use Classification	CR-200 Country Residence	CR-120 Country Residence	CR-80 Country Residence	CR-60 Country Residence	CR-40 Country Residence	R-120 Residence	R-80 Residence	R-60 Residence	R-40 Residence	R-20 Residence	R-15 Residence	R-10 Residence	MF-44 Multi- family Residence	MHS-40 Mobile Home Subdi- vision Residence	SC-44 Senior Citizen Housing	MFPRD	OSC
(10) Public utility structure or right-of-way, sewage treatment plant or water supply facility necessary to serve the municipality, except wireless communications towers and antennas.	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	X	X	X	SE
(11) (Reserved)																	
(12) Yacht club, nonprofit.	X	SE	SE	SE	SE	SE	SE	SE	SE	X	X	X	X	X	X	X	X
(13) Wireless communications towers and antennas.	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE
(14) Hospitals.	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	X
(15) Hospice residence home.	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	X
(16) Assisted-living facility.																	X
D. Business uses.																	
(1) Agriculture, excluding animal husbandry.	P	P	P	P	P	P	P	P	P	P	P	P	X	X	X	X	X
(2) Animal husbandry, dairy and dairy products.	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	X
(3) Greenhouse, agricultural.	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	X
(4) Horse farm, horse stabling facility or horseback riding academy.	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE
(5) Plant nursery.	SE	P	P	P	P	P	P	P	P	P	P	P	P	P	P	X	X
(6) Winery.	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	X	X
(7) Marinas and boatyards lawfully existing prior to adoption of this chapter.																	
(8) Reconstruction or expansion of preexisting marinas and boatyards in Residential Districts.							SE	SE	SE	SE	SE	SE					
(9) Battery energy storage systems in excess of 600 kWh.	X	X	X	X	X	X	SE	SE	X	X	X	X	SE	X	SE	X	X
E. Industrial uses (none permitted).	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
F. Accessory uses.																	

SOUTHAMPTON CODE

Use Classification	CR-200 Country Residence	CR-120 Country Residence	CR-80 Country Residence	CR-60 Country Residence	CR-40 Country Residence	R-120 Residence	R-80 Residence	R-60 Residence	R-40 Residence	R-20 Residence	R-15 Residence	R-10 Residence	MF-44 Multi- family Residence	MIIS-40 Mobile Home Subdi- vision Residence	SC-44 Senior Citizen Housing	MFPRD	OSC
(1) Accommodations for not more than 2 roomers or boarders in a 1-family detached dwelling, provided that separate kitchen and entrance facilities shall not be provided.	X	X	X	X	X	P	P	P	P	P	P	X	X	X	X	X	X
(2) Customary accessory structure and/or use, except those prohibited by this chapter.	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
(3) Home occupation other than home professional office.	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
(4) Home professional office.	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
(5) Agricultural labor housing.	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE
(6) Private garage or private off-street parking area pursuant to §§ 330-92 through 330-101.	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
(7) Private mooring, dock or similar marine structure in a tidal wetland or walkway over the dunes on an ocean beach pursuant to § 330-39 et seq.	X	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
(8) Private swimming pool.	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
(9) Signs pursuant to §§ 330-85 through 330-91.	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
(10) Temporary roadside stand for sale at retail of fish and shellfish taken by the vendor from local waters.	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE
(11) Temporary roadside stand for sale at retail of farm products grown on the premises.	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
(12) Wind energy conversion systems.	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
(13) Greenhouse, private.	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
(14) Accessory apartment pursuant to Article IIA of this chapter.	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
(15) Bed-and-breakfast in an accessory building.	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE

ZONING

Use Classification	CR-200 Country Residence	CR-120 Country Residence	CR-80 Country Residence	CR-60 Country Residence	CR-40 Country Residence	R-120 Residence	R-80 Residence	R-60 Residence	R-40 Residence	R-20 Residence	R-15 Residence	R-10 Residence	MF-44 Multi- family Residence	MHS-40 Mobile Home Subdi- vision Residence	SC-44 Senior Citizen Housing	MFPRD P	OSC P
(16) Battery energy storage systems less than or equal to 600 kWh	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
(17) Battery energy storage systems in excess of 600 kWh	X	X	X	X	X	X	SE	SE	X	X	X	X	SE	X	SE	X	X

Exhibit H

**Town of Southampton
Planning Board
Conditional Preliminary Plat Approval
(PBRES- 2019-335)**

Lewis Road PRD

**Adopted
October 24, 2019**



**Town of Southampton
Long Island, NY**

**Planning Board Resolution
PBRES-2019-335**

Adopted
Oct 24, 2019 2:00 PM

Lewis Road PRD (formerly The Hills at Southampton) - Conditional Preliminary Plat Approval

Information

Department:	Planning	Sponsors:	
Category:	Subdivision	Projects:	Lewis Road PRD (formerly The Hills at Southampton)
Functions:	None		

Item Discussion

Consider granting conditional approval for the Preliminary Subdivision Application for DLV Quogue, LLC entitled "Lewis Road PRD," which includes 118 units as: 8 clubhouse units, 15 village cottages, 53 village lots, 16 village estates, and 26 woodland estates, and ten (10) workforce housing units on-site, and two workforce housing (2) units off-site on parcels along Old Country Road and within walking distance of downtown East Quogue. Other project components include: a recreational complex, fitness center, community pool and clubhouse, private 18-hole golf course and other accessory structures, all as on-site amenities for the exclusive use of the site's residents; and 65.46% open space equaling 427.58 acres, on a total of 178 assembled tax parcels totaling 588.39 acres of land situated in the CR-200 Zoning District, Compatible Growth Area of the Central Pine Barrens Overlay District and Aquifer Protection Overlay District, located generally north and east of Lewis Road in the vicinity of Spinney Road and extending north to and beyond Sunrise Highway in East Quogue.

Body

WHEREAS, the Preliminary Subdivision Application of Lewis Road PRD was received by the Southampton Town Planning Board on November 1, 2018, with additional information/revised plans submitted on December 7, 2018 and again on December 12, 2018; and

WHEREAS, the applicant also submitted a Site Plan Application on December 10, 2018 for the Planning Board's review of the HOA accessory recreational buildings, structures and uses, including the golf course; and

WHEREAS, the Preliminary Subdivision and Site Plan applications are being reviewed concurrently; and

WHEREAS, the Preliminary Subdivision and Site Plan Application of DLV Quogue, LLC entitled "Lewis Road PRD" proposes 118 units as: 8 clubhouse units, 15 village cottages, 53 village lots, 16 village estates, and 26 woodland estates, plus an additional twelve (12) workforce housing units on-site. Other project components include: a recreational complex, fitness center, community pool and clubhouse, private 18-hole golf course and other accessory structures, all as on-site amenities for the exclusive use of the site's residents; and 72.67% open space equaling 427.58 acres, on a total of 178 assembled tax parcels totaling 588.39 acres of land situated in the CR-200 Zoning District, Compatible Growth Area of the Central Pine Barrens Overlay District and Aquifer Protection Overlay District, located generally north and east of Lewis Road in the vicinity of Spinney Road and extending north to and beyond Sunrise Highway in East Quogue; and

WHEREAS, the Zoning Board of Appeals, in a decision dated November 15, 2018 (Decision No. D018150) made a determination that the 18 hole golf course is accessory to the 118 home subdivision; and

WHEREAS, the project was classified as a Type I Action pursuant to Article 8 (State Environmental Quality Review Act, SEQRA) of the New York State Environmental Conservation Law and Chapter 157 (Environmental Quality Review) of the Code of the Town of Southampton; and

WHEREAS, the proposed action underwent a complete SEQRA review as part of a Change of Zone Application with the Southampton Town Board, who served as lead agency for the project; and

WHEREAS, as Lead Agency, the Southampton Town Board completed the SEQRA process, from the initial classification and coordination to the acceptance of the FEIS and adoption of a Findings Statement dated November 27, 2017; and

WHEREAS, pursuant to §330-243 of the Town Code, the Southampton Town Planning Board has been an involved agency for the two-stage review of the project and, as an involved agency, is required to identify any differences between the current action before the Planning Board and what was considered under the adopted FEIS by the Town Board, and whether or not those changes warrant a supplemental EIS ("SEIS"); and

WHEREAS, at their meeting on January 24, 2019, the Southampton Town Planning Board retained the services of B. Laing Associates, Inc. to assist with the Board's SEQRA review for the pending subdivision application of Lewis Road PRD, including a determination as to whether a Supplemental Environmental Impact Statement is required, and for the preparation of a Findings Statement prior to issuance of any decision on the application; and

WHEREAS, at their meeting on June 27, 2019 the Southampton Town Planning Board was presented with B. Laing Associates, Inc. SEQRA-SEIS Threshold Review dated June 27, 2019, which found that no SEIS is necessary; and

WHEREAS, by resolution dated June 27, 2019, the Southampton Town Planning Board deemed the Preliminary Application complete for public review and made referrals to advisory agencies including the Suffolk County Planning Commission ("SCPC") and Central Pine Barrens Joint Planning and Policy Commission ("CPBC"); and

WHEREAS, a public hearing on the Preliminary Application was held on July 27, 2019 and was adjourned until August 8, 2019, and subsequently closed with a 10-day written comment period; and

WHEREAS, the total proposed number of residential units / lots for the Lewis Road PRD is 118 and is derived from the 94 lot yield map for the 489.9 acre combined Discovery Land and former Kracke properties together with the transfer of 24 Town-allocated development rights from the 38.3 acres of old filed map properties and 55.7 acres of described property previously referred to as the Parlato properties, as follows:

1. The total acreage of The Lewis Road PRD is indicated as 588 acres from which the yield was derived.
2. The 94 lot yield on the combined Discovery Land and former Kracke properties is a reasonable demonstration of the permitted yield on these properties. All lots as indicated meet the minimum required area and dimensional requirements of the CR-200 zoning district. All lots have frontage on a street providing access to improved roads. Recharge areas and a park area are provided.
3. The 24 development rights from the Parlato properties are broken down as follows: 8.89 development from the 38.3 acres of old filed maps and 16 development rights from 55.7 acres of described property. These development rights have been allocated pursuant to Chapter 244 of the Town Code. With respect to the 38.3 acres of Parlato old filed map properties, the 8.89 development right allocations were based on the allocation formulas prescribed by Sections 244-2 (J) and 330-221 (B)(2) of the Town Code and Chapter 6.3.1.1 of the Central Pine Barrens Comprehensive Land Use Plan, as amended Nov. 12, 2012. With respect to the 55.7

acre Parlato described property, the 16 development right allocation was based on a subdivision yield map pursuant to Sections 244-3 (A) and 330-221 (B)(2) of the Town Code.

WHEREAS, based on a yield of 118 lots, the Long Island Workforce Housing Act and Town Code §216-9 (Long Island Work Force Housing Program) would provide a density incentive of 10%, or an additional twelve (12) dwelling units for affordable housing, for a total of 130 lots; and

WHEREAS, at the Pre-Application, the Town Planning and Development Administrator recommended that the workforce housing requirement be satisfied by construction of the 12 units rather than payment of a fee as previously required by the Town Board, and the Planning Board agreed with the recommendations of the Southampton Town Planning and Development Administrator; and

WHEREAS, the Preliminary maps show construction of 12 workforce housing units onsite; and

WHEREAS, pursuant to Chapter 292-35(B) of the Town Code (Subdivision Regulations) the subdivision park area requirement for an 118-lot subdivision (excluding the workforce housing units) is 5.9-acres and the Planning Board has determined that the park requirement is satisfied with the provision of on-site recreational facilities including the golf course designed for use of the residents of the proposed subdivision and dedication of 65% of the property for park, recreation and open space purposes, including potential trail linkages; and ; and

WHEREAS, the Planning Board has reviewed and considered the requirements of §292-36H of the Town Code with respect to the width of the street right-of-way and find that the proposed street right-of-way of forty (40) feet can accommodate the required paved width of the streets and utilities, minimize the amount of clearing and are adequate as private roads maintained by the HOA; and

WHEREAS, the subject parcel is located within the Compatible Growth Area of the Central Pine Barrens Overlay District and therefore must comply with the development standards pursuant to 330-220 of the Town Code and Chapter 5 of the Central Pine Barrens Comprehensive Land Use Plan (CLUP); and

WHEREAS, for the reasons stated in the adopted Preliminary Staff Report dated October 24, 2019 and the SEQRA Findings Statement, the Southampton Town Planning Board finds the project is in compliance with the development standards pursuant to Chapter 330-220 of the Town Code and Chapter 5 of the Central Pine Barrens Comprehensive Land Use Plan ("CLUP"); and

WHEREAS, the proposed subdivision is consistent with the recommendations of the Town's Comprehensive Plan, including the WGEIS and EQGEIS; and

WHEREAS, the Preliminary Application was referred to involved and interested agencies and referral comments were received and are contained in the adopted Staff Report dated October 24, 2019; now, therefore

WHEREAS, the SCPC, by letter dated October 9, 2019, advised that the Commission failed to take an action on the referral within the 45-day statutory time period, which means that the proposed Preliminary Subdivision and Site Plan applications as referred to the Commission are deemed approved in accordance with the provisions of Article XIV of the Suffolk County Administrative Code.

NOW, THEREFORE, BE IT RESOLVED, the Preliminary Subdivision Application of DLV Quogue, LLC entitled "Lewis Road PRD", which proposes 118 lots/units as: 8 clubhouse units, 15 village cottages, 53 village lots, 16 village estates, and 26 woodland estates, plus an additional twelve (12) workforce housing units on-site an accessory buildings, structures and uses, including a recreational complex, fitness center, community pool and clubhouse, private 18-hole golf course and other accessory structures, all as on-site amenities for the exclusive use of the subdivision lot owners/ residents and their guests; and 72.67% open space equaling 427.58 acres, on a total of 178 assembled tax parcels totaling 588.39 acres of land situated in the CR-200 Zoning District, Compatible Growth Area of the Central Pine Barrens Overlay District and Aquifer Protection Overlay District, located generally north and east of Lewis Road in the vicinity of

Spinney Road and extending north to and beyond Sunrise Highway in East Quogue, is hereby approved subject to the following conditions:

1. Four sets of the Revised Preliminary Plat, containing all of the modifications required as conditions of approval herein, shall be submitted for signature by the Planning Board, in addition to the requirements for filing a final plat submission contained in Art. VI of Chapter 292 of the Town Code.
2. To facilitate review of the Final Application, the road, drainage and grading plans, reflecting the Town Engineer's comments, a SWPPP and the subdivision modifications and conditions set forth herein, shall be submitted for preliminary review, with revisions as necessary, by the Town Engineer, prior to the final plat submission.
3. The project shall conform to the State Pollutant Discharge Elimination System (SPDES) GP-08-01 general permit requirements requiring filing of a Notice of Intent (NOI), Erosion and Sedimentation Control Plan and a Stormwater Pollution Prevention Plan (SWPPP), consistent with the Town of Southampton and the New York State Department of Environmental Conservation (NYSDEC). This final plan shall be submitted in conformance with Town and State filing requirements with the final plat submission.
4. The final application shall include road and common driveway plans incorporating Country Lane Standards /curb-less, where applicable, as to allow wildlife access to Open Space parcels.
5. The final plat shall show the table of modified dimensional setbacks for the lots/units and shall include the amount of clearing per lot in conformance with the Aquifer Protection Overlay District and CLUP.
6. Topsoil application and/or other soil amendments shall be undertaken as needed in areas where lawn or landscape plantings are proposed, in order to ensure suitable growing conditions. The establishment of fertilizer-dependent vegetation within the development shall be limited in accordance with the Aquifer Protection Overlay District (APOD). Fertilizer dependent vegetation will be limited by means of a covenant, to 15% of the area of development. This shall be a required notation on the final plat, and shall be ensured through the filing of covenants and restrictions, and shall be reviewed for conformance in connection with Building Permit application plans for all of the individual lots.
7. The ITHMP to establish a maximum application of fertilizer to no more 2.5 lbs/1000 SF/yr of nitrogen to greens, tees and fairways and 1.0 lbs/1000 SF/yr to rough and residential areas.
8. In the event of any violation of Integrated Turf Health Management Plan (ITMHP) protocols, all fertilization and pesticide application activities shall halt, and the use of the golf course shall cease until such time as it can be determine the cause of the violation and the corrective action can be identified.
9. The groundwater sampling program will be reviewable after a period of five (5) years. Additionally, the same requirements for use of an independent sampler, and use of an independent laboratory (both of which shall be acceptable to the Town) to perform all sample testing will ensure that groundwater quality is properly monitored.
10. The IHTMP that contains the components described above will be subject to final review and approval by the Planning Board with a requirement for the submission of regular monitoring reports.
11. If protected species are identified, the Applicant has proposed as mitigation measures that these areas would be avoided by the site plan and/or other options would be implemented, such as plant rescue/relocation. If transplanting is determined to be possible, a professional horticulturalist will perform the transplanting of the species to optimize survival. Transplanting of this species would be the responsibility of the Applicant and would be performed under the supervision of the Applicant in accordance with a protocol approved by the Town prior to the commencement of construction activities.
12. In the same manner as was proposed for the Hills PDD, the Lewis Road PRD will revegetate the estimated 3 acres of the Hills South Parcel/Kracke Property that had been farmed. An additional 7± acres on the Parlato Property and the Hills South Parcel/Kracke Property that had been disturbed but not farmed will be revegetated. Specific revegetation plans were included as part of the Lewis Road PRD site plan application, and must be approved by separate resolution as a condition of approval.
13. As required by the Findings Statement, a program will be prepared for the Lewis Road PRD and submitted to the Town as part of the site plan conditions, to monitor the performance of the site entrance on Lewis Road
14. The Planning Board recommends that the applicant pursue the alternative that would convey the sand from within the site (per Planning Board resolution 2017-335). As stated in the FEIS (Page 1-19), the applicant will continue to pursue the potential to

utilize a conveyor belt system or temporary haul road (options 3 & 4). In the event that options 3 & 4 are not feasible, in order to minimize the potential impact to Lewis Road due to the transport of the subject fill material between the Hills property and East Coast Mines, a performance bond will be required to ensure Lewis Road is restored to pre-construction conditions.

15. The Planning Board will restrict the housing units from constructing accessory apartments in order to maintain the stated yield.
16. The groundwater monitoring program (GMP) for the proposed golf course is proposed to be comprised of two parts: 1) monitoring the volume of fertilizer being applied; and 2) monitoring any impacts on groundwater quality from the fertilizer applied and all applied pesticides potentially leaching into groundwater. As part of the groundwater monitoring program a total of fourteen (14) groundwater monitoring wells and nine (9) lysimeters will be installed throughout the golf course to monitor the water quality beneath the golf course four times per year. The irrigation pond will also be monitored.
17. A street tree plan shall be submitted with the final application that identifies those trees/vegetation to remain and where additional street trees are proposed to be planted.
18. The final plat shall indicate the ownership of the open space parcels shall be noted if any are to remain privately owned, the area(s) will need to be encumbered by applicable Conservation Easements and/or Trail Easements.
19. Removal of site plan elements from all subdivision maps, as may be applicable.
20. The final map shall note the density incentive provisions of the Town Code and indicate the proposed affordable units are being provided on-site.
21. Suffolk County Department of Health Approval prior to the submission final application.
22. As applicable, approval of the Central Pine Barrens Joint Planning and Policy Commission prior to the submission of the final application.

BE IT FURTHER RESOLVED, the Site Plan Application of DLV Quogue, LLC for the recreational buildings, structures and uses as accessory to the "Lewis Road PRD", including a recreational complex, fitness center, community pool and clubhouse, private 18-hole golf course and other accessory structures, all as on-site amenities for the exclusive use of the subdivision lot owners/residents and their guests, is hereby approved subject to the following conditions:

1. Changes to the site plan to be submitted jointly with the final subdivision applications for final review:
 - a. Compliance with the requirements of the Town Engineer.
 - b. Provide parking calculations for uses requiring parking as shown on the site plan.
 - c. It appears the workforce housing units have a zero lot line setback. This needs to be revised to provide a setback consistent with the table of lot modifications.
 - d. The southern legs/fairways of the golf course are currently located on the central and eastern portions of the property as it extends southward toward the LIRR ROW. Since the highest fertilization rates will be on the fairways of the golf course, there will be nitrogen leaching at concentrations greater than the mass balanced average for the site. Therefore, the modeling procedures as outlined in the adopted Findings Statement will be conducted. If the results show a significantly higher nitrogen level than calculated by a mass balancing of the entire site, then the southern legs/fairways of the golf course may be relocated to the central and/or western portions of the property as it extends southward toward the LIRR ROW. This change will add several hundred feet of groundwater buffer to Weesuck Creek, which connects to Shinnecock Bay an impaired water body.
2. The applicant has indicated that there will be two irrigation ponds. The second pond will be the mixing pond prior use for irrigation of the fairways. The highest concentrations of nitrogen will occur in this pond. For that reason, detailed cross sections of the pond liner/barrier with groundwater leak protections and overflow protections is needed prior to approval. A detailed section of this pond shall be provided to the Town and reviewed by the Town Engineer and Planning staff for adequacy of such protections.
3. The mitigation/ fertigation groundwater modeling will need to be rerun as outlined in the adopted Finding Statement with nitrogen calculations provided for specific locations where fertilization will occur. Once these location-specific nitrogen impacts have been layered on the existing mitigation/fertigation groundwater modeling (including the existing nitrogen plume from agricultural uses upgradient of the site), the location of fertigation wells may need to be changed and/or added to, to maximize the capture of nitrogen due to combined impacts of the existing plume, waste water treatment systems and

site-specific fertilization. This revised modeling shall provide for future predictions of nitrogen conditions as it impacts the final location of the Suffolk County Water Authority parcel which will result in new public water supply wells (i.e., an area outside these impact and fertigation locations will be chosen).

4. Submission with the final application elevations and floor plans for all proposed structures stamped by a licensed design professional, subject to review and approval by the Planning Board and the Architectural Review Board.
5. The lighting plan shall provide information demonstrating compliance with Section 330-346(I)(1) of the Town Code for all site lighting and include photometric data.
6. Compliance with the requirements of the Town Engineer.
7. Compliance with the requirements of the Southampton Town Department of Public Safety & Fire Prevention
8. General Conditions:
 - a. Lighting shall be dark sky compliant, no uplighting shall be permitted.
 - b. The installation and/or use of dusk to dawn lighting fixtures, whether located on or off premises and used to illuminate the subject parcel, shall not be permitted;
 - c. No additional lighting on the property without Planning Board approval;
 - d. All lighting shall be shielded and all outdoor lighting shall project downward and light sources shall not be visible to adjacent properties or roadways, in conformance with the Town Code;
 - e. All HVAC systems shall be screened and located so as not be visible from the adjacent roadway.
 - f. This application is subject to inspection fees for the Site Plan and the Stormwater Management Plan. Prior to start of construction, the applicant will need to deliver a **check** to the Engineering Division, payable to the Town of Southampton, in accordance with the fee schedule in effect at the time.
 - g. Please arrange for a pre-construction meeting with the Engineering Division two weeks prior to the start of construction. Engineering Division to be contacted no less than 48 hours in advance, during all phases of the project, to inspect erosion control measures, drainage before backfilling, before and after paving of roads and parking lots. **Failure to obtain Engineering inspections during the construction process will either delay final approval, or incur substantial costs to the applicant to expose installed components, in order to obtain approval.** Prior to final inspection, submit an as built land survey showing all site improvements including, but not limited to, buildings and structures, parking areas, storm-water drainage inlets, retaining wall & fence height and locations.
9. Items to be submitted/completed as condition of approval.
 - a. A maintenance bond having a term of two (2) years shall be submitted to guarantee the survival of the landscaping prior to the issuance of a Certificate of Occupancy. The Planning Division upon completion of the work and acceptance of the landscaping as shown on the approved plan shall set the amount of this bond. The applicant shall submit a cost estimate of the approved landscaping for review and approval in conjunction with setting this bond.

Meeting History

Oct 24, 2019 2:00 PM Video **Town Planning Board - Work Session/Regular Meeting**

RESULT: **ADOPTED [4 TO 3]**
MOVER: Philip A. Keith, Secretary
SECONDER: Dennis Finnerty, Vice Chair
AYES: Dennis Finnerty, John Blaney, John Zuccarelli, Philip A. Keith
NAYS: Jacqui Lofaro, Robin Long, Glorian Berk

Hargrave, Julie

From: Liz Jackson <lizfromli@hotmail.com>
Sent: Tuesday, November 15, 2022 3:33 PM
To: Hargrave, Julie
Cc: mshea@southamptontownny.gov; jscherer@southamptontownny.gov; pboudreau@southamptontownny.gov; bdeluca@eastendenvironment.org
Subject: LEWIS ROAD PRD: Clearing/Groundwater Concerns
Attachments: LewisPRDClearingISSUE.pdf; LewisPRDClearingERRORS.pdf; lewisPRDClearingcalcERRORS.pdf; LewisCPBCoreOpenSpaceIssue.pdf

CAUTION: This email originated from outside of SCWA. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Julie,

Thank you so much for all the work you have been continuing to do, reviewing the Lewis Road PRD project and keeping the responsibility of adequate, accurate and complete information submission on the applicants. Keeping this short, I want to make sure you have this additional information before tomorrow's discussion.

CLEARING CALCULATIONS, OMISSIONS AND DISTURBANCE CONCERNS

1. Total area of property has changed each time new application is submitted. Details are being omitted. Numbers are left in old charts and then referenced differently on newer layouts. Why are these values changing? Property being bought and sold? They never formally explain, and numbers magically always "work out exactly."
2. LANDS to be dedicated to the Town as OPEN SPACE: some already belonged to the Town, other land is already taken and cleared by LIPA, other land is already in use and deeded or covenanted thru Easement as MAIN ACCESS ROADS for existing development. All these areas of DISTURBANCE are still included in calculations of open space.
3. Proposed SCWA site also shows proposed 50 ft wide access Easement, this area is also being calculated as open space.
4. Roads Abandoned throughout Parlato and Timperman parcels are at points not even adjacent to land owned by DLV. And other roads, included in the nearly 16 acres of abandonment to be used to offset development, are calculated or shown twice. Once as part of Timperman Purchase and again as previously included parcels U and V? Where is this recorded? See pdf files attached.
5. Open Space calculations are sometimes clumped into categories like EXISTING VEGETATION OUTSIDE DEVELOPMENT AREA vs INSIDE. (Recently shown with either black or green border and green slanted lines) but lands inside golf course are shown as outside development? sometimes? When I add up the numbers from their charts, the area they are presenting as Lots in O.S. do NOT include all the lands previously disturbed and reference on front chart. Number just float.
6. The only reference to the proposed Conservation Easements which will be required along SOME residential parcels, comes in cryptic reference to % lot cleared under front chart of parcels. Rather than referencing the 10.01ft wide Conservation Easement, they just include in this table that this property might only be allowed 95% clearing. This may be another way they have been tweaking numbers as needed. Then those areas are later mentioned on second chart where open space was being calculated. But again, very poorly referenced and questionable as to how all this was being used in final calculations.

7. Construction Plans now shows a 6ft Security Fence to be placed almost entirely within lands presently designated as open space. Preventing any wildlife to continue moving through the areas, in addition to physically DISTURBING the vegetation all along the transect that will be this fence. Fence would run along backyards of each property along Spinney and would also impact natural woodlands owned by EQ Cemetery Association. Fence basically CANCELS out any argument the applicant had previously regarding the use of fragmented open space to qualify rather than providing more land preserved in larger parcels. Fence runs along Town Preservation lands as well.

8. The original plan referenced access via a Paper Road which was already vetted by Planning Board and established as part of subdivision. The new alternative they came forth with, is a private Easement agreed upon by landowners without authorization of Planning Board. They may have requested it be placed elsewhere on that lot, if proper review took place. NOW the developers are forcing this one option, NOT including the land as part of the project as they don't own it. They are NOT including the disturbance as part of their clearing calculations. They are now being told that Town would require additional vegetation be cleared and Lewis Road be extended into the EQ Farms Parcel, in order for the developers to utilize this as an entrance.

9. (Clearing aside) lands within Easement are also being used to transport sewage and water and will be responsible for controlling drainage and flooding along Lewis Road. How is this allowed, code requires items be contained on subject lot.

10. Current Clearing Request requests that developer be allowed to clear 15 ft wide areas alongside the extent of open space throughout the entire development. They claim this is required to install erosion control barriers. The act of clearing/bulldozing along the boundary lines would guarantee that this project will not be able to maintain these areas undisturbed. They will no longer have any opportunity to TWEAK the numbers when an issue comes up. What penalty is there for disturbing the open space parcels? Required cost to revert? That will in no way deter them.

11. Clearing along the clearing limits will also open up all those lands to additional disturbance from invasive weeds and pests that arrive on site with contractors and materials.

12. In the Groundwater Management plan submitted, they themselves state that as part of the plan, Groundwater monitoring wells will need to be in place and collecting data for at least 3 months prior to the start of any land clearing. Meanwhile the individuals hired to do the land clearing are already planning to start Dec 1. * this is not our fault, they are responsible for their own submissions and timeliness in responding etc. We have been asking to see construction plans for years, and last week was first time I saw one.

13. WHY are irrigation ponds now permitted to be 20+ feet deep, regularly standing water? This was our concern prior to pine barrens approval and applicant assured you and us that the proposed depth at that time was all that would be required.

14. Please LOOK CLOSELY at the lands along golf course in vicinity of Out Parcels in area designated as being underground start of Weesuck Creek. There are a number of deep Drainage Reserve Areas which have been placed along this most vulnerable area, recharge areas where elevation will be reduced to 14ft or less? How is this not a direct means of Groundwater Contamination?

15. Also Groundwater Management Documents reference 5yr terms, yet project will not be completed in 5yrs time.

Please, remain strong and continue to request that the applicant provide you with functional information. Don't let them come in and start saying it's all in the plan without actually seeing it in the plan, and verifying the numbers add up.

Sincerely,

Elizabeth Jackson
516-639-2838

Parcels within Old File Map Area ARE currently in use.

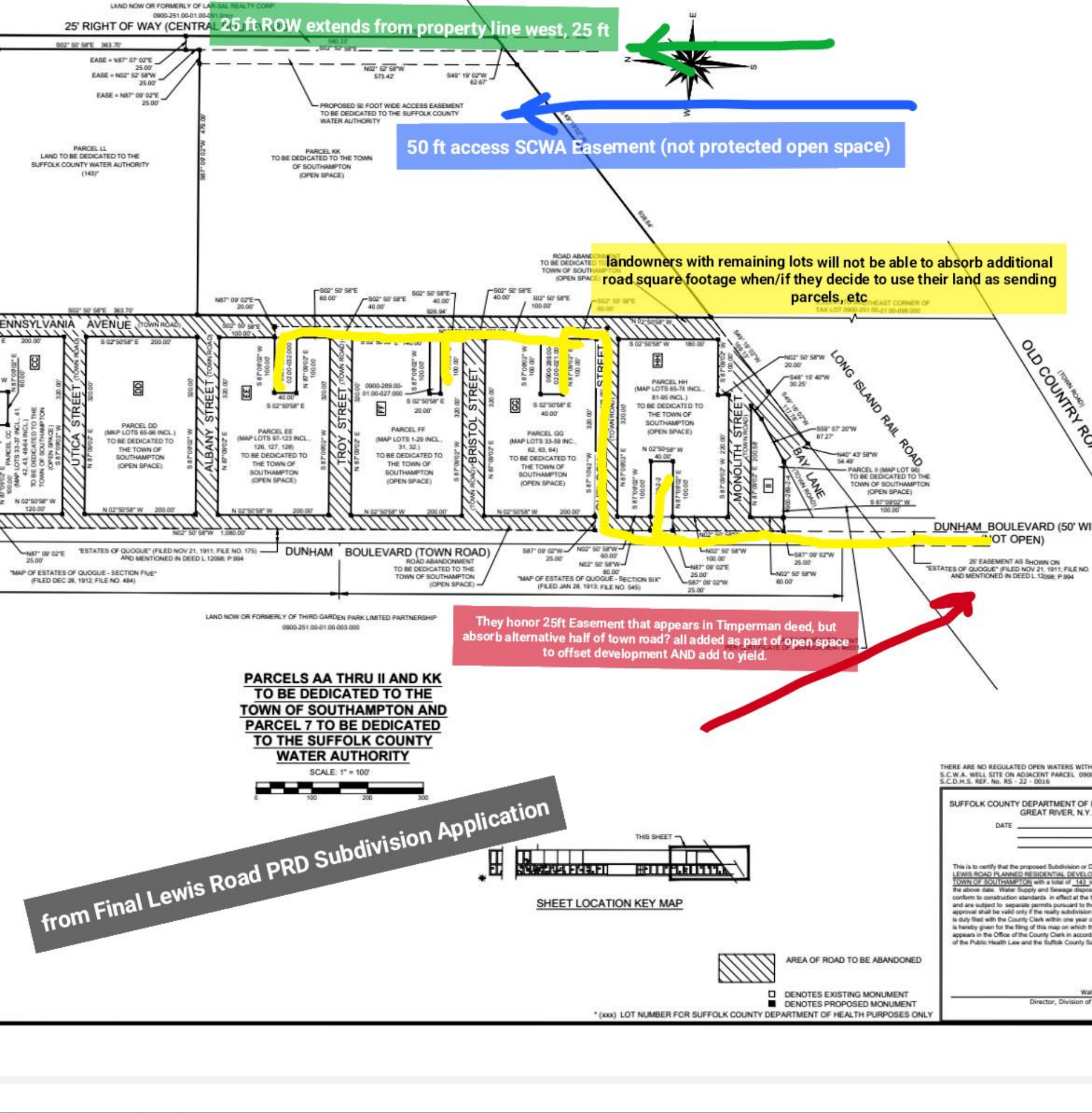
DLV granted 14ft ROW across OPEN SPACE

Land was sold while applications for subdivision were active. Now cleared antenna commercial property

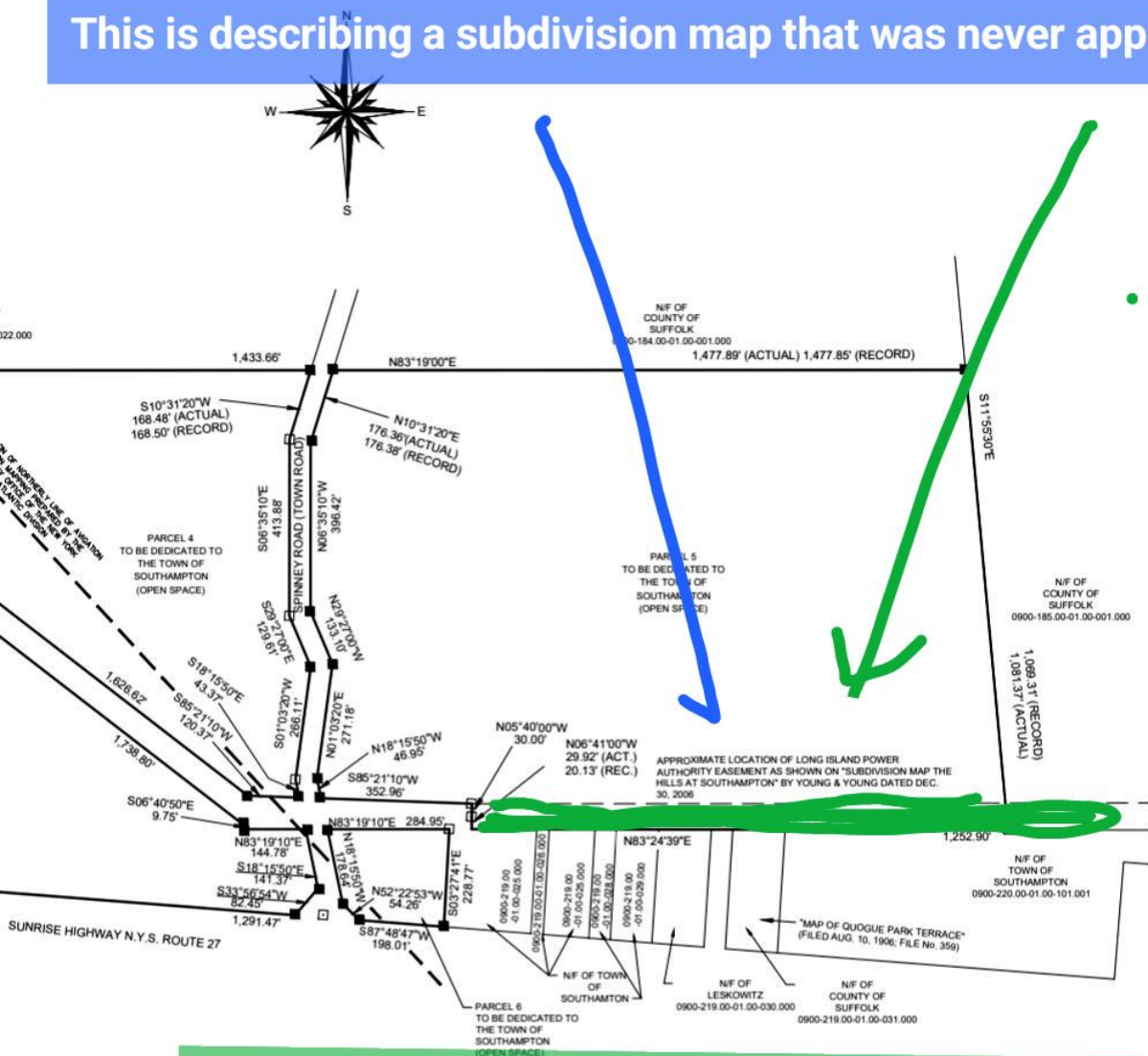
Timperman parcel

These are not trivial amounts of land, scale if project makes them appear less significant, but totals to around 16 ACRES of land, never taxed, never privately purchased, previously Owned And Protected by TOS already.

how are they allowed to take roads which aren't even adjacent to parcels they own?



This is describing a subdivision map that was never approved



Land is cleared and being used as continuation of public utility,
cleared, and NEVER acknowledged as such

**PARCELS 3, 4, 5, AND 6
TO BE DEDICATED TO THE
TOWN OF SOUTHAMPTON**

SCALE: 1" = 200'



THERE ARE NO REGULATED OPEN WATERS WITHIN
S.C.W.A. WELL SITE ON ADJACENT PARCEL 0900-219-00-01-00-031.000
S.C.D.H.S. REF. No. RS - 22 - 0016

SUFFOLK COUNTY DEPARTMENT OF HEALTH
GREAT RIVER, N.Y.

DATE _____

This is to certify that the proposed Subdivision or Development of the
LEWIS ROAD PLANNED RESIDENTIAL DEVELOPMENT
TOWN OF SOUTHAMPTON with a total of "153" lots
the above date. Water Supply and Sewage disposal
conform to construction standards in effect at the time
and are subject to separate permits pursuant to those
approval shall be valid only if the resubdivision / development
is duly filed with the County Clerk within one year of the
is hereby given for the filing of this map on which this
appears in the Office of the County Clerk in accordance
of the Public Health Law and the Suffolk County Sanitary

□ DENOTES EXISTING MONUMENT
■ DENOTES PROPOSED MONUMENT

* (xxx) LOT NUMBER FOR SUFFOLK COUNTY DEPARTMENT OF HEALTH PURPOSES ONLY

Walter
Director, Division of Environmental Health

Timperman Property extends beyond the land they previously claimed ownership of as per Parlato.

NORTHERLY LINE OF BALTIMORE STREET AS SHOWN
ON "MAP OF QUOGUE ESTATES - SECTION FOUR"
(FILED OCT 09, 1912; FILE 321)

SOUTHERLY LINE OF LAND DESCRIBED
IN DEED L.12098; P.994 AS MONUMENTED

(TOWN ROAD)

BALTIMORE STREET

0900 - 251.00 -
01.00 - 026.000
(MAP LOTS 1-8
INCL.) TO BE
DEDICATED TO
THE TOWN OF
SOUTHAMPTON
(OPEN SPACE)

0900 - 251.00 -
01.00 - 027.000
(MAP LOTS 9-16
INCL.) TO BE
DEDICATED TO
THE TOWN OF
SOUTHAMPTON
(OPEN SPACE)

0900 - 251.00 -
01.00 - 029.000
(MAP LOTS 25-32
INCL.) TO BE
DEDICATED TO
THE TOWN OF
SOUTHAMPTON
(OPEN SPACE)

0900 - 251.00 -
01.00 - 028.000
(MAP LOTS 17-24
INCL.) TO BE
DEDICATED TO
THE TOWN OF
SOUTHAMPTON
(OPEN SPACE)

(TOWN ROAD)

WASHINGTON STREET

N 02°50'58" W

Lots later omitted from parlato parcels list (Parcel U and V)

yet road abandonment acreage still included?

Hargrave, Julie

From: bk@kearnsgroupintl.com
Sent: Wednesday, November 16, 2022 11:30 AM
To: Hargrave, Julie
Subject: Hills - east Quogue

CAUTION: This email originated from outside of SCWA. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Julie,

I live in East Quogue and am opposed to the hills project.

The latest iteration of the project shows a fence, approx. 1/2 mile long and six feet high along the edge of the homes of the residents on Spinney Rd.

I am opposed to this as it will impede the ability of wildlife to access critical areas they use to feed. It will cut them off from the pine barrens.

I ask you make this and the other objections forwarded to you from east Quogue residents at the PBC meeting today.

Thank you.

Bill Kearns
117 Spinney Rd.
631 682- 1164

Sent from my iPhone