

**EXCERPT OF THE MINUTES
OF THE WORK SESSION OF
THE NEW CASTLE TOWN BOARD
TUESDAY, NOVEMBER 30, 2010**

PRESENT: Barbara S. Gerrard, Supervisor
Robin Stout, Council Member
Michael B. Wolfensohn, Council Member

Supervisor Gerrard called the meeting to order at 8:00 a.m. Deputy Town Administrator Penelle Paderewski, Town Clerk Jill Simon Shapiro and Town Counsel Clinton Smith were present. Deputy Supervisor Elise Kessler Mottel and Council Member John V. Buckley were recused from consideration of this matter and were not in attendance.....

Resolution on Chappaqua Crossing SEQR Review FEIS Comments

Council Member Stout moved, seconded by Council Member Wolfensohn , to adopt the following Resolution regarding preparation of comments on the Chappaqua Crossing Final Environmental Impact Statement (“FEIS”):

WHEREAS, the Town Board of the Town of New Castle (“Town Board”) received a Petition dated July 9, 2007, with Exhibits 1 through 24 (“Petition”), from SG Chappaqua B, LLC (“Petitioner”), as owner of a parcel identified as Tax Lot 93.9-1-1 consisting of 114 acres and several adjoining parcels consisting of approximately 6 acres, all located between the Saw Mill River Parkway and State Route 117 in the Town of New Castle and commonly known as the Reader’s Digest property (“Property”), seeking to change the zoning of a portion of the Property consisting of approximately 64.3 acres (“Proposed Rezoned Portion”) from B-RO-20 and R-1A to MFPD in order to construct 278 units of age-restricted housing and workforce housing on the Proposed Rezoned Portion (“Proposed Residential Rezoning and Construction”); and

WHEREAS, incidental to the Proposed Residential Rezoning and Construction, Petitioner also has applied to the Town of New Castle Zoning Board of Appeals for variances from certain restrictions in the B-RO-20 zoning on the Property and has stated its intention to redevelop the existing office space in that portion of the Property which will remain in B-RO-20 zoning after the Proposed Residential Rezoning and Construction (“Proposed Commercial Variance and Redevelopment”); and

WHEREAS, by resolution adopted August 14, 2007, the Town Board determined that the Proposed Residential Rezoning and Construction and the Proposed Commercial Variance and Redevelopment (“Proposed Action”) are subject to the State Environmental Quality Review Act under NYS Environmental Conservation Law, Article 8 (“SEQR”), preliminarily classified the Proposed Action as a Type 1 action under SEQR, and declared its intention to act as Lead Agency for the purpose

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of reviewing the environmental impacts of the Proposed Action under SEQR (“Lead Agency”); and

WHEREAS, by resolution adopted September 18, 2007, the Town Board declared that it had been established as Lead Agency for the purpose of reviewing the environmental impacts of the Proposed Action under SEQR; and

WHEREAS, by resolution adopted November 27, 2007, the Town Board authorized the Town Supervisor to complete and sign a Determination of Significance under SEQR declaring that the Proposed Action “may result in one or more large and important impacts that may have a significant impact on the environment, therefore a positive declaration will be prepared” and adopted a Positive Declaration under SEQR regarding the probable environmental impacts if the Proposed Action is approved and built; and

WHEREAS, by resolution adopted February 20, 2008, the Town Board adopted a certain “Scoping Document for Preparation of a Draft Environmental Impact Statement” for the Proposed Action in accordance with NYS Department of Environmental Conservation Rule 617.8 (6 NYCRR §617.8); and

WHEREAS, the Town Board received a draft Draft Environmental Impact Statement for the Proposed Action dated October 15, 2008 (“First Draft DEIS”), from Petitioner in accordance with NYS Department of Environmental Conservation Rule 617.9 (6 NYCRR §617.9) and reviewed that First Draft DEIS and comments on it from Town staff and the Town’s planning consultant, other consultants, special counsel, and counsel and by resolution adopted January 27, 2009, the Town Board acting as Lead Agency determined that the First Draft DEIS was incomplete and issued to Petitioner a Summary of Completeness Review Comments Prepared by Lead Agency; and

WHEREAS, the Town Board received draft First Draft DEIS revisions dated March 31, 2009 (“Revised Draft DEIS”), from Petitioner on March 31 and April 3, 2009, and further revisions to the Revised Draft DEIS, including but not limited to written Town comments and Petitioner responses to the respectively same dated May 1 and May 7, 2009 (“Further Revised Draft DEIS Revisions”), which upon further communication with Town staff and the Town’s planning consultant, other consultants, special counsel, and counsel, were integrated into the Revised Draft DEIS resulting in a Draft Environmental Impact Statement dated May 2009 (“May 2009 DEIS”); and

WHEREAS, the Town Board reviewed and considered the Revised Draft DEIS, the Further Revised Draft DEIS Revisions, the May 2009 DEIS, and those written comments from Town Staff and the Town’s planning consultant, other consultants, special counsel, and counsel, and those oral comments from Town Staff and the Town’s planning consultant, other consultants, special counsel, and counsel, and other advice, information, and impressions available to them, and by resolution adopted May 19, 2009, the Town Board acting as Lead Agency for the Proposed Action determined that the May 2009 DEIS was adequate with respect to its scope and content for purposes of commencing the public review under SEQR in accordance with NYS Department of Environmental Conservation Rule 617.9 (6 NYCRR §617.9) on condition that certain requirements (“DEIS Conditions”) would be satisfied; and

WHEREAS, Petitioner satisfied the DEIS Conditions and the Town Board issued a Notice of Completion of the Draft Environmental Impact Statement and a Notice of Public Hearing on

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the Draft Environmental Impact Statement under NYS Department of Environmental Conservation Rule 617.9 and Rule 617.12 (6 NYCRR §617.9 & §617.12) on May 22, 2009, held Public Hearings on the May 2009 DEIS and on the proposed rezoning of a portion of the Property to MFPD and the Multi-Family Planned Development Concept Plan components of the Proposed Action at Town Hall on June 23, 2009, and July 29, 2009, and received written comments on the May 2009 DEIS until between June 23, 2009, and September 25, 2009 (“Comment Period”); and

WHEREAS, a total of 50 persons spoke at the Public Hearings and 153 written comments were received during the Comment Period; and

WHEREAS, the Town Board received a first draft Final Environmental Impact Statement dated March 2010 (“First Draft FEIS ”) from Petitioner by letter dated March 15, 2010; and

WHEREAS, the Town Board, Town staff and the Town’s planning consultant, other consultants, special counsel, and counsel reviewed the First Draft FEIS and Town staff and the Town’s planning consultant, other consultants, special counsel, and counsel met and otherwise communicated comments to the Petitioner regarding the First Draft FEIS including but not limited to detailed written Town comments provided to the Petitioner on June 8, 2010; and

WHEREAS, the Town Board has received a Modified Project Petition dated July 22, 2010, with Exhibits 1 through 13 (“Modified Project Petition”), from Petitioner as owner of the Property to change the zoning of a portion of the Property consisting of approximately 61.6 acres from B RO 20 and R 1A to MFPD (“Modified Proposed Rezoned Portion”), to adopt certain associated text changes to the Town Code zoning provisions on residential lot and bulk requirements in order for Petitioner to construct 199 units of housing on the Proposed Rezoned Portion, including 20 units of affordable housing, and to omit any age-restriction like that originally proposed for the Proposed Residential Rezoning and Construction (“Modified Proposed Residential Rezoning and Construction”), and to adopt certain text changes to the Town Code zoning provisions on business uses, parking and loading requirements, and lot and bulk requirements, among other things, to provide for new low density uses but increase the space to be occupied and reduce the parking requirements applicable to the remaining B RO 20 (“Modified Proposed Commercial Rezoning and Redevelopment”); and

WHEREAS, the Town Board received a revised draft FEIS dated July 2010 (“First Revised Draft FEIS”) from Petitioner by letter dated July 23, 2010, which, among other things, presented and analyzed the Modified Proposed Residential Rezoning and Construction and the Modified Proposed Commercial Rezoning and Redevelopment (“Modified Proposed Action”); and

WHEREAS, the Town Board, Town staff and the Town’s planning consultant, other consultants, special counsel, and counsel reviewed the First Revised Draft FEIS, and Town staff and the Town’s planning consultant, other consultants, special counsel, and counsel met and otherwise communicated comments to the Petitioner on the First Revised Draft FEIS orally and in writing; and

WHEREAS, the Town Board received a second revised draft FEIS dated October 2010 (“Second Revised Draft FEIS”), from Petitioner by letter dated October 19, 2010; and

WHEREAS, the Town Board, Town staff and the Town's planning consultant, other consultants, special counsel, and counsel reviewed the Second Revised Draft FEIS; and

WHEREAS, the Town Board has reviewed detailed comments prepared by Town staff and the Town's planning consultant and other consultants regarding the Second Revised Draft FEIS which identified (1) information that was missing, incomplete, inaccurate, and/or inconsistent ("Incomplete Information"), and (2) certain content that should be revised to either address the Incomplete Information or to more accurately reflect the Town Board's views on the Modified Proposed Action ("Town Board Views") and potential environmental impacts thereof; and

WHEREAS, the Town Board as lead agency is responsible for the adequacy and accuracy of the Final Environmental Impact Statement, regardless of who prepares it, pursuant to NYS Department of Environmental Conservation Rule 617.9(b)(8) (6 NYCRR §617.9(b)(8)); and

WHEREAS, the Town of New Castle must consider the need for a range of housing types including multifamily housing and affordable housing pursuant to Berenson v. Town of New Castle, 38 N.Y. 2d 102 (1975), the Westchester County Housing Opportunity Commission's 2005 Affordable Housing Allocation Plan, and the August 2009 Stipulation and Order of Settlement and Dismissal in U.S. ex. rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York, No. 06 Civ. 2860 (DLC) (S.D.N.Y.); and

WHEREAS, the Town Board believes the Second Revised Draft FEIS does not adequately address certain issues ("Issues") that are among the most important to the Town Board with regard to relevant environmental impacts of the Modified Proposed Action considering social, economic and other considerations including: (1) ensuring the Proposed Commercial Variance and Redevelopment and/or Proposed Commercial Rezoning and Redevelopment preserves the potential viability of the commercial use of the Property; (2) ensuring the Modified Proposed Residential Rezoning and Construction adequately incorporates a range of housing types including multifamily and affordable housing to affirmatively further fair housing in the region; and (3) ensuring the Modified Proposed Residential Rezoning and Construction is consistent with Town zoning, community character, the Town Development Plan, and other related issues relevant to a new residential community in the Town of New Castle; and

WHEREAS, the Town Board has discussed the Incomplete Information, the Issues, and the Town Board Views with Town staff and the Town's planning consultant, special counsel, and counsel; and

WHEREAS, the Town Board wants to work cooperatively with Petitioner to efficiently and expeditiously complete an adequate and accurate Final Environmental Impact Statement for the Modified Proposed Action and to ensure it properly addresses and presents the Town Board Views;

NOW THEREFORE, be it

RESOLVED, that the Town Board directs Town staff and the Town's planning consultants, special counsel, and counsel to prepare a list of Incomplete Information and to provide Petitioner with explicit instructions as to how the Incomplete Information can be completed or otherwise

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satisfied and how Petitioner must provide information to the Town Board for its review and approval in advance of preparing a revision to the Second Revised Draft FEIS; and be it further

RESOLVED, that the Town Board also directs Town staff and the Town's planning consultants, special counsel, and counsel to prepare explicit comments that instruct Petitioner how to revise the Second Revised Draft FEIS to address the Incomplete Information, the Issues and the Town Board Views, as expressed in the Town Board Work Session at which this resolution was adopted and otherwise known to them and appropriate; and be it further

RESOLVED, that the Town Board directs special counsel and counsel to discuss and otherwise coordinate appropriate next steps with Petitioner's counsel to implement the foregoing resolution; and be it further

RESOLVED, that Town staff and/or consultants, special counsel and counsel shall take all steps necessary to implement this resolution.

VOTE

Supervisor Gerrard	AYE
Council Member Stout	AYE
Council Member Wolfensohn	AYE

The resolution was adopted on November 30, 2010.